



Police

Dear Reader:

The following document was created from the MTAS website ([mtas.tennessee.edu](http://www.mtas.tennessee.edu)). This website is maintained daily by MTAS staff and seeks to represent the most current information regarding issues relative to Tennessee municipal 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 municipal 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 MTAS website material.

Sincerely,

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Table of Contents

| | |
|---|----|
| Police | 4 |
| Drug Fund | 4 |
| Sources of Revenue | 4 |
| Fines from Drug Offenses | 4 |
| Forfeited Cash and Proceeds from Sale of Property | 4 |
| Donations | 5 |
| Appropriations | 5 |
| Sources of Drug Fund Revenue Chart..... | 5 |
| Legitimate Expenditures | 5 |
| Drug Treatment and Education Programs | 6 |
| General Drug Enforcement Programs | 6 |
| Nonrecurring General Law Enforcement | 7 |
| Automated Fingerprint Machines | 7 |
| Drug Fund Procedures | 7 |
| Confidential Expenditures | 8 |
| Confidential Fund Requirements | 8 |
| Requesting Funds for Confidential Operations | 9 |
| Receipt, Deposit & Disbursing Confidential Funds | 9 |
| Purchasing Equipment and Supplies from Confidential Funds | 10 |
| Drug Fund Records and Reports..... | 10 |
| Confidential Fund Accounting and Forms | 11 |
| A1 - Custodian's Activity Log for Confidential Funds | 12 |
| A2 - Transaction Record of Confidential Funds | 14 |
| A3 - Agents Activity Log for Confidential Funds | 15 |
| A4 - Accountability of Confidential Funds | 17 |
| A5 - Receipt for Payment to Informant | 18 |
| A6 - Summary of Informant Payment Log | 20 |
| A7 - Confidential Fund Monthly Reconciliation Report | 21 |
| R1 - Report of Confidential Funds Requested or Returned | 23 |
| R2 - Quarterly Report of Confidential Funds | 25 |
| Police Operations | 27 |
| Citations..... | 27 |
| D.A.R.E. Programs | 27 |
| Domestic Violence | 28 |
| Drug Related Operations | 28 |
| Fingerprinting and DNA Samples | 29 |
| Miscellaneous Police Operations | 29 |
| Parking Regulations..... | 31 |
| Warrants | 32 |
| Enforcement of Motor Vehicles and Traffic Rules..... | 32 |
| Traffic Citations | 32 |
| Regulation of Bicycles..... | 34 |
| Emergency Vehicles - Safety..... | 34 |
| Police Officers..... | 35 |
| Minimum Standards | 35 |
| Authority for Officer to Carry Firearms | 36 |
| Notification of Next of Kin | 37 |
| Police Training | 37 |
| Police Overtime | 37 |
| Compensable Time | 38 |
| Fringe Benefit Time | 38 |
| Wait Time | 38 |
| On-call Time | 39 |

Table of Contents

| | |
|--|----|
| Staff Breaks and Meals | 39 |
| Training Programs | 40 |
| Staff Travel Time | 40 |
| Examples of Compensable Working Time | 41 |
| Examples of Non-Compensable Time | 41 |
| Staff Overtime Pay | 42 |
| Work Periods | 42 |
| Overtime Threshold | 43 |
| Canine Handlers | 43 |
| Trading Shifts | 44 |
| Small Police Departments..... | 44 |
| How Work Periods Impact Overtime | 44 |
| Fringe Benefit Time and Work Periods | 45 |
| Twelve-hour Shifts | 45 |
| Staff Compensatory Time | 46 |
| Exempt Employees | 47 |
| Executive Exemption | 47 |
| Staff Administrative Exemption..... | 47 |
| Staff Professional Exemption | 48 |
| Volunteers | 48 |
| Paid Employment in an Unrelated Job | 48 |
| Seizure of Property | 49 |
| Police Retention Schedule..... | 49 |

Police

Reference Number: MTAS-235

Click on the topics listed below in this section for more information.

Drug Fund

Reference Number: MTAS-98

(NOTE: Content in this section was formerly distributed as the "Drug Fund Manual" publication. To print a copy of the entire section, click on the "PDF Version" link.)

The Drug Fund is a *special revenue fund*. A special revenue account exists outside the city's General Fund, and funds in the special revenue account do not revert to the General Fund at the end of the fiscal year. The Drug Fund special revenue account is similar to the special revenue accounts established for street aid funds and solid waste accounts.

The Drug Fund is where revenues and expenditures must be accounted for separately from the General Fund. There is no requirement that a city establish another checking account for the Drug Fund; however, a separate *confidential funds checking account* for expenditures for undercover operations is recommended. Funds for the confidential funds checking account come from the Drug Fund special revenue account. (See T.C.A. § 39-17-420.)

T.C.A. § 39-17-420 establishes the Drug Fund special revenue account and places it under the control of the city recorder. The same statute defines allowable expenditures from the Drug Fund special revenue account.

Sources of Revenue

Reference Number: MTAS-338

There are several sources of revenue for the Drug Fund special revenue account.

Click on the subheadings below for detailed information on each one.

Fines from Drug Offenses

Reference Number: MTAS-341

All fines from drug offenses must be turned over to the local government of the arresting agency. T.C.A. § 39-17-420. T.C.A. § 39-17-428(c)(1) requires that 50 percent of each fine go to the city's General Fund and 50 percent to the city's Drug Fund special revenue account.

Most state courts, including General Sessions and Criminal (Circuit) Courts, allow defendants to pay their fines and court costs on the easy monthly payment plan. The law requires the clerk to apply payments to satisfy state fees first, then court costs, and then the fine. The clerk will then begin forwarding the payments to the city. The proper action for the city recorder is to put 50 percent of each payment in the General Fund and the remainder of each payment in the Drug Fund special revenue account. T.C.A. § 39-17-420, T.C.A. § 39-17-428.

Forfeited Cash and Proceeds from Sale of Property

Reference Number: MTAS-342

Any cash that is forfeited to the city as well as the proceeds from the sale of any forfeited property (usually vehicles) go into the Drug Fund special revenue account. These funds are **not** split between

the General Fund and the Drug Fund special revenue account. Revenue derived from the sale of vehicles seized for DUI or Driving on a Revoked Driver's License does **not** go to the drug fund. Those revenues, less the city's direct costs associate with the seizing, towing and storage of the vehicles, must be forwarded to the state Department of Mental Health.

Donations

Reference Number: MTAS-343

Funds can be donated to the Drug Fund from civic organizations, or a defendant may be ordered to donate funds to the Drug Fund in addition to paying the statutory minimum fine for a drug offense.

A defendant cannot be ordered or allowed to donate money to the Drug Fund without paying at least the minimum fine for the offense. In the past, some defendants were ordered, as a result of a plea bargain, to make a donation to the Drug Fund and pay something less than the minimum fine. In effect this circumvented the requirement to divide fine revenues between the General Fund and the Drug Fund. This action is improper. Op. Tenn. Atty. Gen., 2003.

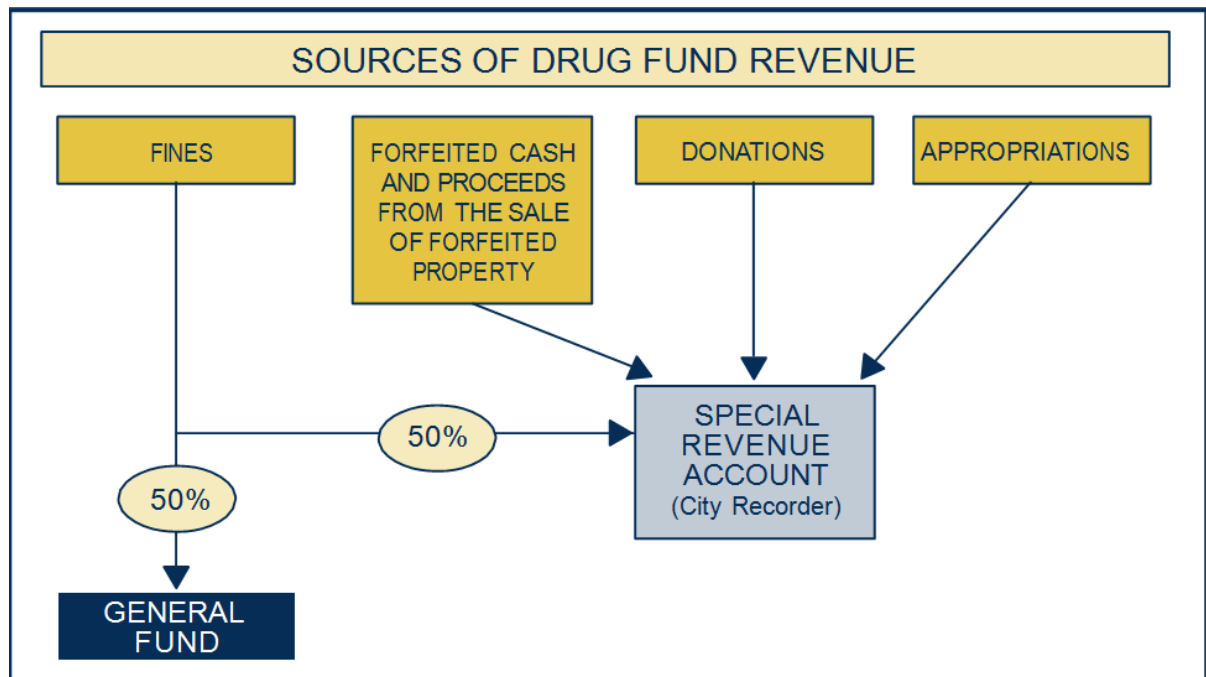
Appropriations

Reference Number: MTAS-344

The local governing body may make appropriations to the Drug Fund. In fact, some cities annually appropriate to the Drug Fund special revenue account the drug fine revenues that normally go to the General Fund.

Sources of Drug Fund Revenue Chart

Reference Number: MTAS-381



Legitimate Expenditures

Reference Number:

MTAS-339

Click on the topics listed below in this section for more information.

Drug Treatment and Education Programs

Reference Number: MTAS-345

Local Drug Treatment Programs

Cities may spend money from the Drug Fund special revenue account to assist local drug treatment programs. There are no state standards defining what constitutes a qualifying local drug treatment program.

Drug Education Programs

Funds may be spent on drug education programs, but there are no specific standards that define a qualifying drug education program. Many agencies fund all or part of the D.A.R.E. or VICTOR programs with Drug Funds. Agencies also may use the funds to purchase anti-drug literature for distribution in the community or local schools or to fund an anti-drug seminar for local residents, P.T.A., or school children.

General Drug Enforcement Programs

Reference Number: MTAS-346

Drug enforcement expenditures are divided into two categories: general drug enforcement and cash transactions relating to undercover operations (confidential expenditures).

General Drug Enforcement

General drug enforcement expenditures include all drug enforcement expenditures that are not directly related to undercover operations. General drug enforcement expenditures include:

- Automobiles for drug investigators
- Maintenance and operational expenditures for a drug officer's automobile, including gasoline;
- Telephone charges, including cellular telephone charges;
- Office supplies and office equipment for drug enforcement officers;
- Drug identification kits for drug investigators and patrol;
- Drug enforcement training;
- Drug dogs and their maintenance, including food and veterinary service.

General drug enforcement expenditures are not confidential and must follow the city's purchasing guidelines. If the city has not adopted purchasing guidelines, it must follow the state purchasing guidelines for local governments. T.C.A. § 39-17-420.

Confidential Expenditures

Cash transactions relating to undercover operations are confidential expenditures. Examples of these expenditures include:

- Payments made to an informant for information
- Payments made to an independent undercover agent;
- Money spent to actually purchase drugs as part of an undercover operation;
- Gasoline or minor maintenance for an undercover vehicle or an informant's vehicle when used in undercover operations.

Office of the Comptroller *Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs* (2012). See <http://www.comptroller.tn.gov/la/pdf/2012ProceduresForCashTransactions.pdf> [1].

Nonrecurring General Law Enforcement

Reference Number: MTAS-347

Drug Fund money also can be spent for general law enforcement purposes. Unlike drug enforcement expenditures, general law enforcement expenditures must be *nonrecurring*. Generally, nonrecurring expenditures are capital expenditures, but not all qualifying expenditures will be capital expenditures. Basically, a city cannot spend Drug Fund money for ongoing, operational items.

Some examples of allowable nonrecurring, general law enforcement expenditures include:

- Patrol and administrative vehicles;
- Blue lights, sirens, radios, and radar units for the vehicles;
- Video cameras, both for vehicle units and camcorders and body cameras;
- Handguns but not ammunition (Ammunition for a drug enforcement officer is allowable as a drug enforcement expenditure.);
- Fax machines and copiers;
- Cellular telephones for general law enforcement and administrative officers, but not the monthly bill;
- Non-drug patrol dogs but not food or veterinary services.

Automated Fingerprint Machines

Reference Number: MTAS-348

While the purchase of automated fingerprint machines qualifies as nonrecurring general law enforcement expenditure, there are special statutory regulations pertaining to these purchases.

All agencies must set aside 20 percent of their Drug Fund revenues each year toward the purchase of an automated fingerprint machine until they actually purchase the machine or until they enter into an agreement with another agency that has a machine to do fingerprinting. These agreements most often occur between a city police department and a county sheriff's department. The 20 percent set aside can be accounted for in a separate reserve account, or it can be left in the Drug Fund special revenue account.

Once an automated fingerprint machine is purchased, or the city has entered into an agreement with an agency that has one of the machines, the city may use up to 20 percent of each year's Drug Fund revenues to pay for some operational costs of the fingerprint machine, including telephone line charges, software maintenance contracts and hardware maintenance contracts. These operational costs should be included in any agreement the city has with another agency to perform its fingerprinting.

Drug Fund Procedures

Reference Number: MTAS-340

The Special Revenue Account

The actual Drug Fund is a special revenue account under the control of the city recorder. It is accounted for in much the same way as street aid funds and the solid waste special revenue account. All Drug Fund revenues are deposited in the Drug Fund special revenue account, not the confidential funds account. All expenditures except cash transactions relating to undercover operations are made from the Drug Fund special revenue account.

The Budget

The police chief and the mayor, or the city manager in cities that have one, are to present a Drug Fund budget to the local governing body annually for approval. Funds cannot be expended beyond amounts approved in the budget. Additionally, funds not already in the account cannot be spent, even if approved in the Drug Fund budget.

Purchasing Guidelines

All expenditures except qualifying confidential expenditures must follow the city's purchasing guidelines. If the city has not adopted a purchasing policy, the state purchasing law for local governments must be followed. Purchasing guidelines generally specify minimum monetary limits requiring bids or quotes. The guidelines also may specify purchasing processes, such as written requisitions and purchase orders. T.C.A. § 39-17-420.

Confidential Expenditures

Reference Number: MTAS-349

T.C.A. § 39-17-420 states that all cash transactions relating to undercover operations must follow guidelines established by the state comptroller's office. The comptroller's guidelines, *Procedures for Handling Cash Transactions Related to Undercover Investigative Operations of County and Municipal Drug Enforcement Programs*, have the authority of law.

The fund for confidential expenditures is actually a separate account under the control of the police chief or his or her designee. Funds for the confidential account are requested from the city recorder, then deposited in the confidential account. All Drug Fund revenues are deposited into the Drug Fund special revenue account, not into the confidential funds account.

Confidential Fund Requirements

Reference Number: MTAS-350

In January 1991, the Comptroller of the Treasury for the State of Tennessee issued *required* cash handling procedures related to undercover investigative operations for county and municipal drug enforcement programs. The comptroller worked with the Tennessee Bureau of Investigation, the Tennessee Sheriff's Association, and the Tennessee Association of Chiefs of Police to develop routine cash handling procedures for undercover drug operations that would be applicable to all local government jurisdictions. The establishment of these standards also enables the independent auditor of the local government to perform a thorough audit of the operations activity without compromising the undercover officers, their informants, or their investigations.

Local Drug Funds are to have been established in accordance with T.C.A. § 53-11-415. In order to comply with this statute, the city recorder or finance officer of the municipality is to set up a separate fund to record the financial activity related to drug operations. Entitled "Drug Fund," this special revenue fund will be used to record all proceeds and expenditures related to drug enforcement for the local government in compliance with T.C.A. § 39-17-420.

In summary, these procedures require the fund to remain under the control of the city recorder or finance officer. However, upon the demand of the chief executive of the arresting law enforcement agency, the finance officer will distribute funds to pay for the drug enforcement program. The law enforcement agency will provide an accounting of these Drug Fund expenditures to the municipal finance officer.

General Applicability

It is important to emphasize that the following transaction guidelines are unique to *confidential* cash disbursements related to undercover drug investigations by the law enforcement agency. These guidelines do not pertain to normal, nonconfidential Drug Fund expenditures. Nonconfidential purchases and other disbursements from the Drug Fund are to be handled in the same manner as any other purchase or disbursement of the city in accordance with generally accepted accounting principals, the municipal charter, the Municipal Budget Law, the Municipal Purchasing Law of 1983, and any applicable municipal purchasing ordinance(s).

Of course, the procedures that follow are the *minimum* guidelines for Drug Fund confidential cash transactions. The chief law enforcement officer may require additional local procedures as deemed necessary.

Training

It is the responsibility of all chiefs of police and their agents involved in the handling of confidential Drug

Funds to be familiar with these guidelines. Documentation affirming this fact is to be maintained in the law enforcement agency's office. Law enforcement officials are expected to be familiar with the guidelines concerning confidential Drug Fund cash transactions established by the state and to operate in compliance with these guidelines. Noncompliance may be itemized in audit findings by your internal auditor, which may initiate further action by the Department of Municipal Audit.

Requesting Funds for Confidential Operations

Reference Number: MTAS-351

There are two methods by which the chief of police shall account for confidential funds in the Drug Fund:

- A separate column in the cash journal;
- A separate bank account.

Depending on the size of the department, a separate confidential bank account may be the easier of the two. A separate checking account for confidential funds maintained by the police chief or a designee in the police department provides the agency immediate access to funds for law enforcement activities. This account also can be used to account for the money provided to agents.

To initiate available funds for confidential operations, an advance will be requested from the city recorder or finance director. These funds come from the Drug Fund special revenue account maintained in the office of the city recorder. Although the initial amount used to establish the account is left to the discretion of the police chief, it is recommended that this amount be limited to what will be needed in the next 45 days.

Receipt, Deposit & Disbursing Confidential Funds

Reference Number: MTAS-352

Receipt and Deposit of Confidential Funds

As with any municipal cash transaction, pre-numbered receipts should be issued to record the distribution and return of cash for undercover operations. If the city recorder makes a cash advance to the police chief or designee for an undercover investigation activity (such as a drug buy), a receipt shall be issued to record the amount of the advance. Once the investigation activity has been completed and the cash is returned to the city recorder, another receipt shall be issued for the returned amount.

The returned cash shall be deposited into the Drug Fund checking account in a timely manner.

Disbursing Confidential Funds

As mentioned previously regarding confidential funds, the law enforcement agency may use a second Drug Fund checking account as a confidential funds account under the control of the police chief or his or her designee. MTAS recommends use of a separate checking account as a "best practice." Disbursements are to be made either to the police chief or other employee(s) through the use of pre-numbered checks. A separate checking account simplifies the recording procedure. All checks issued from this account are to be signed by the chief of police or designee and shall be made payable to the person receiving the funds.

All employees who participate in cash transactions in any capacity shall have a fidelity bond to protect the law enforcement agency and the municipality. The annual employee bond should be issued in an amount that would equal at least the largest single cash transaction in which the employee would normally participate over the course of the year.

Before purchasing bonds on your employees, it is a good idea to check with your liability insurance carrier. It's possible that automatic coverage may already be in effect or may be available to insure the activities of employees who handle cash.

Purchasing Equipment and Supplies from Confidential Funds

Reference Number: MTAS-353

The Municipal Purchasing Law and local municipal purchasing ordinances apply also to normal purchases of supplies and materials from the Drug Fund special revenue account. However, if confidentiality is required for a purchase, these rules are suspended. Please note that there are specific procedures to follow even though other purchasing rules are not in effect. Documentation, including invoices and price quotes, shall be filed in support of the disbursement of funds to establish a paper trail of the use of cash. Care should be exercised in following proper procedures regarding these exceptional purchases.

It is popular opinion that the purchase of security recording devices is a confidential purchase. This view is incorrect. There is no reason the purchase of a briefcase camera or clandestine recording device would be confidential.

Drug Fund Records and Reports

Reference Number: MTAS-354

Quarterly Report to City Recorder

Although the police chief has control of the confidential funds checking account, the comptroller requires the police chief to be accountable for drug funds transferred into it. Quarterly reports concerning account activity are to be completed by the police chief or designee and submitted routinely to the city recorder. Report R-2 is provided by the comptroller for this purpose. It requires the beginning balance of confidential funds maintained by the police department, the amount of funds received, the amount of funds disbursed, and the ending balance. The city recorder and the police chief shall keep copies of the reports on file. As of 2019, the comptroller's office is not requiring agencies to submit the quarterly report to the city recorder.

Annual Report of Drug Related Investigations and Cases Developed from Use of Local Drug Funds

A former statutory requirement that the law enforcement agency prepare an annual report to the district attorney general has been repealed. However, the police chief is accountable to the local legislative body for the proper disposition of the proceeds of goods seized and forfeited under the provisions of T.C.A. § 53-11-451 and for the fines imposed under T.C.A. § 39-17-428. An annual *audited* report of such funds shall be submitted by the chief of the municipal law enforcement department to the local legislative body. In years when the Office of the Comptroller of the Treasury conducts an audit, if any, the audit satisfies this requirement. If no audit is conducted by the Office of the Comptroller of the Treasury, *then an audit shall be performed by a certified public accountant to satisfy this requirement.*

The annual city audit satisfies this requirement.

The governing body of the law enforcement agency responsible for the investigation and arrest that resulted in the drug conviction shall submit to the comptroller, by August 1 of each year, a report of funds collected and paid to the General Fund of the governing body pursuant to this section. This report shall show the amount of money spent on drug education and drug treatment.

Availability of Records and Reports for Audit

Activity of the confidential portion of the Drug Fund enjoys a certain amount of protection from the Open Records Law. However, this doesn't mean that the records are completely exempt from outside scrutiny during the annual audit. By law, all of the books and records involving confidential funds shall be subject to inspection and audit by the Comptroller of the Treasury or his authorized representative *except* for informant files, tapes involving undercover operations and evidence. Of course, this right to inspection and audit extends to the independent public accountant performing an audit under a contract approved by the comptroller.

Unaccounted for Confidential Funds

Cash handling procedures for confidential funds are designed to account for all Drug Fund resources used by agents during drug investigations. Unfortunately, situations arise in which confidential funds are left unaccounted. In this event, the police chief must immediately inform the district attorney general of the missing funds. This notification must be in writing, and a copy should be filed with the Division

of Local Government Audit with the Comptroller of the Treasury. Furthermore, it is the responsibility of the police chief to initiate action to collect any funds that are unaccounted for.

Maintaining Informant Files

Procedure requires the law enforcement agency to establish and maintain a separate file for each informant. The Summary Informant Payment Log, Form A-6, shall be kept in the file and made available for audit. Other information regarding the informant file normally is confidential.

Use of Funds by a Secondary Agency

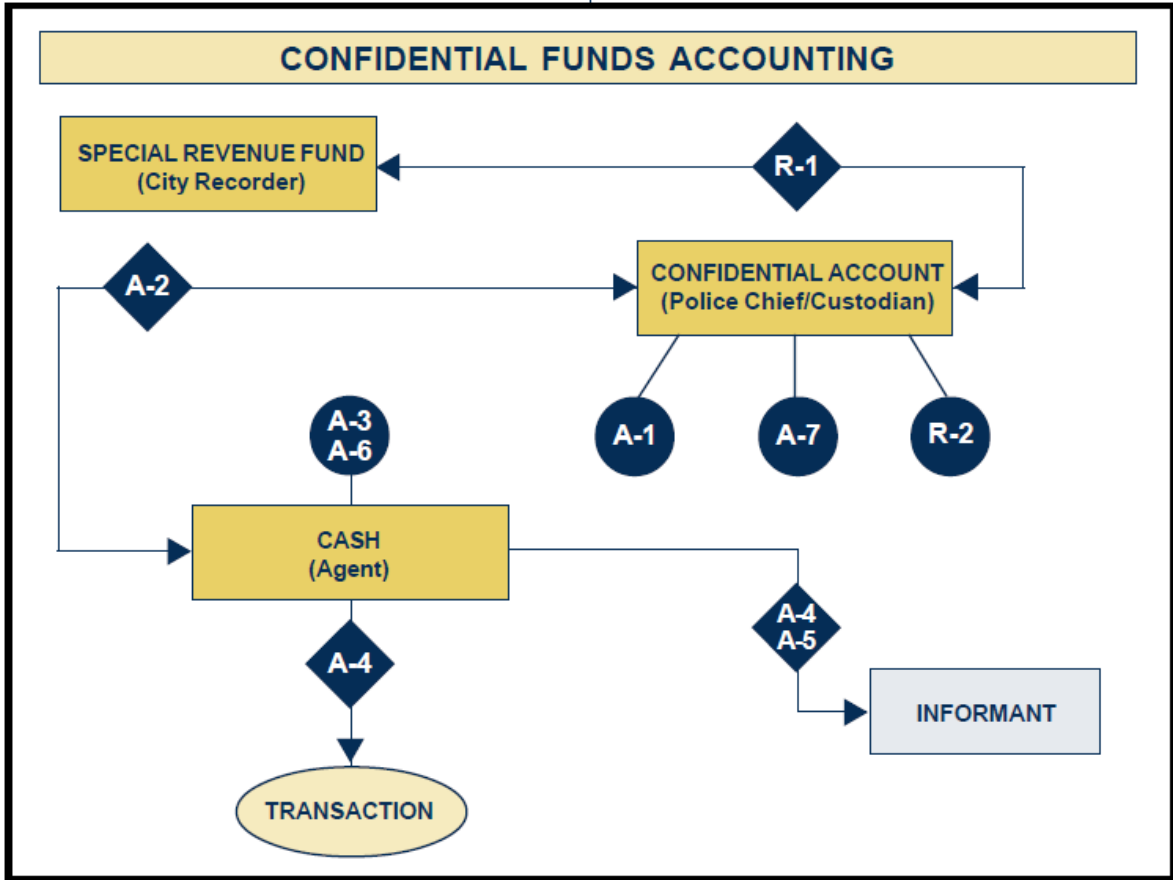
From time to time, one law enforcement agency may seek the assistance of another agency while performing drug investigations. This may involve the need to transfer Drug Fund resources from one agency to another. This practice is acceptable when the agency providing confidential funds receives a contract or other written document from the receiving agency acknowledging receipt of the funds and accepting responsibility for the proceeds. This written acknowledgment shall be signed by the police chief or designee of both the agency receiving the funds and the agency providing the funds. Copies of all such agreements shall be retained for audit by both agencies.

Confidential Fund Accounting and Forms

Reference Number: MTAS-383

Most municipal transactions produce stacks of documentation. There may be requisitions, purchase orders, invoices, receipts and cancelled checks. Confidential cash transactions do not produce any such normal documentation. The integrity of the entire confidential funds process is dependant on documentation prepared by the police officers.

The comptroller's office has developed several forms to document the various types of confidential cash transactions and are covered on subsequent pages. The flowchart below should serve as a "roadmap" for use of the various forms required by the comptroller's office when accounting for cash transactions relating to undercover operations. Diamonds indicate the form to be completed for each transaction. Circles indicate cumulative or periodic reports.



A1 - Custodian's Activity Log for Confidential Funds

Reference Number: MTAS-385

Maintained by the custodian, this form is used for every transaction involving the custodian. This log records payments into and out of the confidential account, the type of transaction, key details about the transaction, and a running balance of the confidential account. The log is cumulative and tracks multiple transactions over time.

A2 - Transaction Record of Confidential Funds

Reference Number: MTAS-386

This form is completed each time funds are transferred between an agent and the custodian, including both advances of cash to agents and return of cash by agents. A separate form is completed for each transaction. It also serves as a request for cash by an agent.

Form A-2

TRANSACTION RECORD OF EACH ADVANCE AND RETURN OF CONFIDENTIAL FUNDS

| | |
|---|--------------------------|
| ADVANCE | Transaction Number _____ |
| Agent's name _____ ID number _____ | |
| Unit _____ | |
| Amount of advance \$ _____ Case or reference # _____ | |
| Intended purpose: <input type="checkbox"/> Investigative advance <input type="checkbox"/> Use as a flash roll * | |
| Advance approved by _____ | |
| Signature of chief law enforcement official or designee | Date |
| Advance received by _____ | |
| Agent's signature | Date |
| Check # _____ Date _____ | |
| * Flash rolls shall be returned within 72 hours unless extended for an additional 48-hour period. | |

| | |
|---|--------------------------|
| RETURN | Transaction Number _____ |
| Agent's name _____ ID number _____ | |
| Unit _____ | |
| Amount returned \$ _____ Case or reference # _____ | |
| Advance returned by _____ | |
| Agent's signature | Date |
| Advance returned to _____ | |
| Signature of chief law enforcement official or designee | Date |
| Receipt # _____ Date _____ | |

Original: Filed with Fund Custodian
 Copy: Retained by Agent

A3 - Agents Activity Log for Confidential Funds

Reference Number: MTAS-387

Maintained by the agent, this form tracks every transaction an agent makes in paying informants, buying drugs and incurring miscellaneous confidential expenses. It is cumulative and tracks multiple transactions over time. It also maintains a running balance of funds in the custody of the agent.

A4 - Accountability of Confidential Funds

Reference Number: MTAS-388

Form A-4

ACCOUNTABILITY OF CONFIDENTIAL FUNDS

Case # _____

FUNDS EXPENDED

Transaction Number _____

EVIDENCE:

Type and quantity _____

Date _____ Amount spent \$ _____

UNDERCOVER MOTOR VEHICLE:

Gasoline and Oil

Date _____ Amount spent \$ _____

Station/store _____

Date _____ Amount spent \$ _____

Station/store _____

Date _____ Amount spent \$ _____

Station/store _____

INFORMANT EXPENSES:

Code name _____ CI # _____

Date _____ Receipt – Yes [] No [] Amount \$ _____

MISCELLANEOUS:

Explanation _____ Date _____ Amount \$ _____

Explanation _____ Date _____ Amount \$ _____

I certify that the above expenditures are true and correct.

Agent's signature

Date

Original: Filed with Fund Custodian

Copy: Retained by Agent

This form is completed by the agent for each transaction and provides documentation of the agent's expenses.

A5 - Receipt for Payment to Informant

Reference Number: MTAS-389

This form should be completed by the agent each time he or she pays an informant for information or for services performed, including the purchase of drugs. It should be signed by the informant, using a pre-assigned code name. The receipt also should be witnessed by another officer.

Form A-5

RECEIPT FOR PAYMENT TO INFORMANT

A. Case or reference # _____ Date _____

I hereby acknowledge receipt of \$ _____ (_____)
numbers words

paid to me by: _____ for consideration of

[] information and/or [] services

Described as follows: _____

Section B is to be filled out when funds are advanced to informant for future purchase(s).

B. It is understood and agreed that this money is to be expended by me only for the purchase, as evidence, of controlled substances. If no such purchase is made, or if such purchase is made for less than the total sum furnished to me before _____, (date/time)

I will forthwith refund the sum furnished or the balance thereof to the above-named officer of the _____ (agency name). In any event, upon demand by the above-named officer at any time, I will forthwith refund to him/her the total amount of any sum thus furnished to me that has not yet been expended by me for the purchase, as evidence, of controlled substance(s). Furthermore, it is understood that this money is the property of _____ (city) and that misuse or conversion of the money to my personal use will render me liable to prosecution.

C. _____ Date _____
Payee code name or number

_____ Date/Time _____
Officer's signature

_____ Date _____
Witness's signature

Original: Filed with fund custodian

Copy: Retained by agent

A6 - Summary of Informant Payment Log

Reference Number: MTAS-390

This form, maintained by the agent, is a cumulative log of all transactions with a single informant who is identified by code name. The form should be placed on top of the informant file.

MTAS-391

Completed by the custodian, this form serves the same purpose as reconciling a checkbook with the monthly bank statement.

Form A-7

CONFIDENTIAL FUND MONTHLY RECONCILIATION REPORT

A. RECONCILIATION

| | |
|---|----------|
| Bank balance per statement | \$ _____ |
| Date of statement _____ | |
| Add: Deposits in transit (from section B). [Deposits recorded on Activity Log (A-1), but not appearing on the bank statement.] | \$ _____ |
| Subtract: Outstanding checks (from section C). [Checks written and recorded on Activity Log (A-1) but not appearing on the bank statement.] | \$ _____ |
| Balance per Activity Log | \$ _____ |
| Date _____ | |

B. DEPOSITS IN TRANSIT

| Date | Amount |
|----------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| TOTAL \$ | _____ |

C. OUTSTANDING CHECKS

| Check # | Amount |
|----------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| TOTAL \$ | _____ |

D. CONFIDENTIAL FUNDS WITH AGENTS

| Name | Amount |
|-------|----------|
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| _____ | \$ _____ |
| TOTAL | \$ _____ |

* Parts A, B, and C are completed only if confidential funds are maintained in a separate bank account.

E. SUBMISSION AND APPROVAL

| | |
|----------------------|----------------------|
| _____ Prepared by | _____ Approved by |
|----------------------|----------------------|

R1 - Report of Confidential Funds Requested or Returned

Reference Number: MTAS-392

This form is used by the custodian to actually request funds from the special revenue account (Drug Fund) for the confidential account. It also is used to return excess funds back to the special revenue account.

Form R-1

REPORT OF CONFIDENTIAL FUNDS REQUESTED OR RETURNED

To: _____
City recorder/finance director

I am requesting funds in the amount of \$ _____ for use in the drug enforcement program.

I am returning funds of \$ _____ that have accumulated in the drug control (confidential funds) account.

LAW ENFORCEMENT AGENCY'S CERTIFICATION:

Submitted by _____
Chief law enforcement official

Title _____

Date _____

CITY RECORDER/FINANCE DIRECTOR CERTIFICATION OF RECEIPT OR PAYMENT

Amount Received \$ _____ Receipt # _____

Amount Paid \$ _____ Warrant or Check # _____

By _____

Title _____

Date _____

R2 - Quarterly Report of Confidential Funds

Reference Number: MTAS-393

The police chief must submit a quarterly report to the recorder by the 30th of the month following the close of the quarter.

Form R-2

QUARTERLY REPORT OF CONFIDENTIAL FUNDS

For the quarter ending _____, 20____

TO: _____
City Recorder/Finance Director

The following represents a true and accurate accounting of confidential funds held by the office of _____ for the quarter listed above.
Police chief or designee

| | |
|---|-------------|
| Balance of confidential funds, first of quarter | \$ _____ |
| Add: Funds received from City Recorder/Finance Director | \$ _____ |
| Less: Expenditures from confidential funds | \$(_____) |
| Less: Funds returned to City Recorder/Finance Director | \$(_____) |
| Balance of confidential funds, end of quarter | \$ _____ |

Submitted by _____
Chief law enforcement official

Title _____ Date _____

This report must be filed with the City Recorder/Finance Director within 30 days of the end of the months of September, December, March and June each year.

Original: Filed with City Recorder/Finance Director
Copy: Retained by the law enforcement agency

Police Operations

Reference Number: MTAS-236

Police Authority Outside City

A city's police authority is extended one mile beyond its boundaries but not beyond the county's limits and not within one mile of any other city's boundary "for the suppression of all disorderly acts and practices forbidden by the general laws of the state." T.C.A. § 6-54-301. Mutual aid contracts may be made with another city, with a metropolitan airport authority that provides law enforcement service, with the county, or with organizations of residents and property owners in unincorporated communities providing law enforcement assistance. T.C.A. § 6-54-307.

The Interlocal Cooperation Act allows contracts between cities and counties for police services. T.C.A. §§ 12-9-101, *et seq.*

Citations

Reference Number: MTAS-398

Citation in Lieu of Arrest or Warrant

Police officers who have observed an ordinance violation or, upon investigating, have reason to believe a city ordinance violation has occurred may issue a citation to appear for trial instead of making an arrest, provided the person cited signs an agreement to appear and waives a warrant issuance. If the person refuses to sign such an agreement, the usual procedure of arrest, booking, and release on bail (or commitment to jail) applies. This procedure does not apply to non-residents of Tennessee or to a charge of driving while under the influence of intoxicants or drugs. T.C.A. §§ 7-63-101–107.

For arrests under Title 40 of the Tennessee Code, it is mandated that an officer use similar procedures for any misdemeanor. Specifically, T.C.A. § 40-7-118 includes a list of situations in which the officer may use discretion and either issue a citation or detain the person. Another list describes situations in which citations should not be issued. When using this list, the police officer must write on each ticket the reason for not issuing a citation. This statute is somewhat detailed, and city police officials should study it carefully.

Officers are mandated to use citations instead of arrests for traffic violations not requiring the offender to appear before a magistrate or judge. This statute also sets out some exceptions and a detailed procedure that should be studied carefully by police officers involved in traffic control. See, T.C.A. §§ 55-10-207 and 55-10-203.

Citations in Lieu of Arrest for Health and Sanitation Violations

In the areas of sanitation, litter control, and animal control, a city may, by ordinance or resolution, designate employees who have the power to issue ordinance summonses for violations of any ordinance, law, or regulation. Such an ordinance summons is to be treated as a citation in lieu of arrest. If the offender refuses to sign an agreement to appear in court, the employee may request the clerk of the court to issue a summons, or he or she may request a police officer to make an arrest or witness the violation and issue a citation in lieu of arrest, as provided in T.C.A. § 7-63-104. If the offender fails to appear in court after signing an ordinance summons agreement, the court shall issue a warrant.^[1] See *generally*, T.C.A. §§ 7-63-201–204.

^[1] Please take note of the municipal court's contempt powers under the Tennessee Municipal Court Reform Act, specifically T.C.A. § 16-18-306.

D.A.R.E. Programs

Reference Number: MTAS-400

D.A.R.E. programs are authorized by the Drug Abuse Resistance Education Act of 1989. This joint program of the state Board of Education and the Department of Safety is taught in local schools by trained law enforcement officers. Local school systems may receive funds under the Drug-Free Tennessee program to implement D.A.R.E. programs. T.C.A. §§ 49-1-401–406.

Domestic Violence

Reference Number: MTAS-399

Under certain circumstances, judges may place conditions on release or bail for people charged with domestic violence. The law enforcement agency having custody of the defendant must provide a copy of the conditions to the defendant upon his or her release. In addition, the law enforcement agency must:

- use all reasonable means to notify the victim; and
- send to the victim's last known address or personally give to the victim a copy of any conditions of release. (Failure to furnish a copy of conditions shall not constitute negligence per se.)

An officer who has reason to believe that a person has violated the conditions of his release may make an arrest with or without a warrant (T.C.A. § 40-11-150).

A law enforcement officer's preferred response to domestic violence is to arrest the primary aggressor. The officer does not have to determine that a victim is not a primary aggressor. Preferred response means the officer must make the arrest unless there is a clear and compelling reason not to make the arrest. When a law enforcement officer believes that all parties are equally at fault, the officer must exercise discretion in determining whether to make any arrests. However, the officer must offer to transport the victim to a location where arrest warrants are issued and help the victim obtain an arrest warrant. T.C.A. §§ 36-3-601, *et seq.*

Police officers must enforce orders of protection and may arrest for a violation with or without a warrant. An arrest must be made without a warrant if the officer has jurisdiction, if there are reasonable grounds to believe the order has been violated, and if the officer has verified that an order is in effect. T.C.A. § 36-3-611.

T.C.A. § 10-7-504(a)(17) requires utilities – and allows municipalities – to keep confidential the telephone number, address, and other information about a domestic violence shelter or rape crisis center when the director requests such in writing.

All law enforcement agencies must have adopted a domestic violence policy. The agencies must provide for education on the handling and investigation of and response to domestic violence reports. T.C.A. § 38-12-106.

Drug Related Operations

Reference Number: MTAS-403

Drug Fines; Special Revenue Fund

T.C.A. § 39-17-428 and T.C.A. § 53-11-451, respectively, entitle local governments responsible for arrests in drug-related cases to retain the proceeds of fines and of goods seized and forfeited in such cases. T.C.A. § 39-17-428(c)(1) requires that 50 percent of the fines received by the local government be paid into a special revenue fund; the other 50 percent is paid into the local government's general fund.

With respect to the special revenue fund, the money may be used for drug enforcement, drug treatment and education, and certain non-recurring drug program general law expenditures (generally capital outlays). In addition, "a portion of any fine collected pursuant to subsection (b) (the schedule of fines for certain drug-related offenses) may be expended to fund programs and services for infants and children who are afflicted by HIV or AIDS." In the case of municipalities, the chief law enforcement officer and the mayor (or the county mayor in Moore and Trousdale counties) must recommend a budget for the fund, which budget must be approved by the municipal governing body. Different requirements apply to Metropolitan Nashville-Davidson County. T.C.A. § 39-17-420(a)(2).

Cash transactions from the special revenue fund related to undercover operations must comply with procedures established by the comptroller. The law continues to require that purchases with drug fund money comply with all applicable purchasing laws. Twenty percent of the funds must be set aside to pay for automated fingerprinting equipment until reaching the equipment's purchase price. Instead of buying the fingerprinting device, local governments may enter into agreements with other local governments to use their automated equipment. Additionally, local governments may continue to

earmark up to 20 percent of drug fund revenues to offset the cost of dedicated phone lines, maintenance contracts, and support contracts for the automated fingerprinting instrument. T.C.A. § 39-17-420.

Clerks of municipal courts exercising general sessions jurisdiction must collect \$75 from any person found in violation of the terms of a suspended sentence when the violation is based upon a positive drug test. Funds from this assessment will be used to administer drug court treatment programs created by courts exercising criminal jurisdiction. This act also allows juvenile courts to create and operate drug court treatment programs, but provides that revenues from the \$75 fee cannot be used to support these juvenile programs. T.C.A. §§ 16-22-109, 114.

Methamphetamine Precursors

T.C.A. § 39-17-431 establishes several restrictions on the sale of methamphetamine precursors, such as limiting their sale to only licensed pharmacies and prohibiting the sale of products containing precursor base of more than 5.76 grams to the same person in a 30-day period. This section supersedes ordinances that were in effect on March 31, 2005.

Quarantine of Drug Sites

T.C.A. §§ 68-212-501, *et seq.*, allow local law enforcement agencies to quarantine methamphetamine and other stimulant drug manufacturing sites until they are cleaned up and certified by an industrial hygienist as safe for humans. Within seven days of a quarantine order, the law enforcement agency must notify the commissioner of the Department of Environment and Conservation of the date of the order, county, address, name of the site owner, and a brief description of the site. The law enforcement agency must also file a notice of quarantine with the county register.

Charging Inmates for Services

A municipality may charge an inmate in the municipal workhouse a copay for substance abuse treatment provided by the municipality. T.C.A. § 41-4-115(d). The municipality also may charge a fee to inmates for participating in GED or other academic testing and for escorts to funeral homes and health care facilities upon the death or sickness of a family member. The governing body must authorize these fees by a two-thirds vote.

Drug Dealer Liability

T.C.A. §§ 29-38-101, *et seq.*, establish procedures for municipalities and others to obtain damages that result from illegal drug use.

Fingerprinting and DNA Samples

Reference Number: MTAS-402

Law enforcement agencies are required to make a full set of fingerprints of each person arrested for an offense that results in incarceration or posting bond. Two sets of prints must be sent to the TBI if the agency maintains fingerprints manually. The TBI keeps one set and sends the other to the FBI. T.C.A. § 38-3-122, T.C.A. § 8-8-201(35). Departments that send fingerprints electronically must maintain with the arrest report one hard copy of the fingerprints and acknowledgment from the TBI that the electronic copy has been received and accepted. When a person is arrested repeatedly for public intoxication, the officer must note that fingerprints are on file. Sanctions for failing to comply with the fingerprinting requirements apply only to fingerprints taken on or after July 1, 1999, and are imposed on the agency conducting the fingerprinting.

Prior to purchasing fingerprinting equipment, local departments are required to obtain certification from the TBI that the equipment is compatible with the TBI's and the FBI's automated fingerprint identification system. T.C.A. § 8-4-115, T.C.A. § 39-17-420.

The arresting authority must take a biological sample for DNA analysis from any person arrested for certain violent felonies. The sample must be taken after determination by a magistrate or grand jury that probable cause exists for the arrest but before release. T.C.A. § 40-35-321.

Miscellaneous Police Operations

Reference Number:

MTAS-401

Suppression of Nuisances

Offenses specifically designated "nuisances" by statute and several other general offenses, including lewdness, gambling, prostitution, selling or exhibiting obscene material, drunkenness, and breach of the peace, are subject to abatement in a chancery, circuit, or criminal court. The court may order any personal property, money, or stock used in connection with such activities to be sold at public auction, and the proceeds are to be shared equally by the state general fund and the general fund of the municipality whose officers made the seizure. T.C.A. §§ 29-3-101–111.

Sexual Offender Registration

Certain sexual offenders are required to register within 48 hours of a change of status and are subject to monitoring. They must report periodically to update information in law enforcement files. T.C.A. §§ 40-39-201, *et seq.*

The public has access to TBI records containing sexual offender information if the offenses were committed on or after July 1, 1997. The TBI also must place the information on the Internet. T.C.A. § 40-39-106.

Public Drunkenness

Municipalities may not enact ordinances prohibiting public drunkenness. This offense is now punished exclusively under state law. T.C.A. § 33-8-510.

Reports to Police

All hospitals, clinics, sanitariums, doctors, physicians, surgeons, nurses, pharmacists, undertakers, embalmers, or other persons called upon to tender aid are required to report to a police chief any person in or brought into a city who is "suffering from any wound or other injury inflicted by means of a knife, pistol, gun, or other deadly weapon, or by other means of violence, or suffering from the effects of poison or suffocation". T.C.A. § 38-1-101.

Gun Control Prohibited

State law provides that "no city, county, or urban-county government shall occupy any part of the field of regulation of the transfer, ownership, possession, or transportation of firearms, ammunition, or components of firearms or combinations thereof." However, this law does not affect the validity of any ordinance or resolution enacted before April 8, 1986. This section also prohibits municipalities from bringing lawsuits against gun manufacturers based upon the lawful design, manufacturing, marketing, and sale of handguns to the public. T.C.A. § 39-17-1314. Another statute prohibits the state or political subdivisions from prohibiting the possession, transfer, transport, carrying, storage, dispensing or use of firearms during a state of emergency. T.C.A. § 58-2-107.

Emergency Vehicle Lights

All vehicles except law enforcement vehicles are prohibited from having flashing blue lights or flashing blue lights in combination with flashing red lights. Vehicles operated by reserve or auxiliary police officers may, with the permission of the police chief, also use blue flashing lights or blue flashing lights in combination with red flashing lights. T.C.A. § 55-9-414.

Workhouse

Any municipality is empowered to maintain a "workhouse or house of correction". T.C.A. § 41-3-101. Few, if any, municipalities use this authority. Municipalities also may make agreements with other municipalities and counties to form regional jail authorities. T.C.A. §§ 41-12-101, *et seq.*

Using an Interpreter to Communicate with a Hearing Impaired Child in Domestic Violence and Child Abuse Cases

Law enforcement officers are required to use an interpreter trained in sign language, instead of a child's family member, when the officer is investigating an alleged domestic abuse or child abuse case that may have involved or occurred in the presence of a hearing-impaired child. Authorizes the interpreter to interpret from a remote location or live, if necessary. Requires all law enforcement agencies to maintain a list of interpreters developed by the Tennessee Council for the Deaf, Deaf-Blind and Hard of Hearing.

Racial Profiling Prevention Policy

On or before January 1, 2016, every law enforcement agency in Tennessee is required to have adopted a written policy that prohibits racial profiling by agency employees.

Enforcement of City Ordinances by Sheriffs

Subject to an agreement among the municipality, the sheriff, the county's general sessions court, and the county's governing body, it is the sheriff's duty to enforce a city's ordinances if by ordinance the city declares this policy and furnishes certified copies of its ordinances to the sheriff and the county's general sessions court. Furthermore, the city must agree that it will pay enforcement costs not covered by court costs collected under its ordinances. "Civil penalties" are to be paid to the city, as distinguished from "court costs". T.C.A. § 8-8-201(34), T.C.A. § 12-9-104, T.C.A. § 16-15-501(b)(1).

Charitable Solicitations

Groups that solicit funds to benefit public safety personnel must register with the secretary of state as "charitable organizations". T.C.A. § 48-101-501(1). Volunteer fire departments, rescue squads, and local civil defense organizations are exempt from this requirement. T.C.A. § 48-101-502(a)(3).

Parking Regulations

Reference Number: MTAS-594

Parallel parking generally is allowed only on the right side of a street, except a city may, by ordinance, permit parking on the left side of one-way streets and angle parking on any street. The state Department of Transportation must approve angle parking on federal and state highways. T.C.A. § 55-8-161.

Use of Wheel Immobilizers

A municipality is authorized to regulate the commercial use of wheel immobilizers on motor vehicles. T.C.A. § 6-54-132.

Handicapped Parking

Any person without the appropriate license plate or placard who parks in a parking space designated with the wheelchair-disabled sign may be punished in a court with state law jurisdiction by a \$200 fine, which cannot be waived, and up to five hours of community service work assisting disabled people. T.C.A. § 55-21-108, T.C.A. § 55-8-160(a)(15). In addition to the fine, the vehicle may be towed. Signs designating handicapped parking must indicate that improperly parked vehicles may be towed and the driver fined \$200. The signs also must provide the name and number of the property owner, lessee, or agent in control of the property. T.C.A. § 55-21-108(a).

A person is "disabled" for purposes of handicapped parking if he or she is a paraplegic or amputee, cannot walk 200 feet without stopping to rest, or has not less than 20/200 vision with corrective lenses. T.C.A. § 55-21-102.

A disabled veteran or physically handicapped person displaying a certificate or special license plate is relieved "from liability for any violations with respect to parking" except parking in a designated fire lane or a lane required for morning or afternoon rush-hour traffic. T.C.A. § 55-21-106.

T.C.A. § 55-21-105 purports to regulate the number of accessible and van accessible disabled parking spaces that must be provided, along with certain dimensions for van accessible spots.

Any municipality, county, or metropolitan government may establish a special unit to enforce disabled parking laws and ordinances. Any person age 21 or older, regardless of disability status, may be appointed as a volunteer to enforce parking laws for the disabled. Members of the special enforcement unit must wear a distinctive piece of clothing, law enforcement insignia, and a badge while on duty. These provisions apply only in municipalities, counties, and metropolitan governments that adopt them by a two-thirds vote. T.C.A. § 55-21-110.

Fees Prohibited For Disabled Parkers

A municipality may not charge any parking fee to a disabled vehicle with a handicapped placard or license plate when the disabled person actually is the driver or a passenger. T.C.A. § 55-21-105.

Parking Near Fire Hydrants

A municipality may restrict parking near a fire hydrant only within 7.5 feet to 15 feet of the hydrant. The restricted distance must be appropriately identified. T.C.A. § 55-8-160(a)(4).

Warrants

Reference Number: MTAS-397

Service of Warrants and Process

Arrest warrants for people charged with municipal offenses committed within a city may be served by a city police officer at any point in the county in which the city is located. T.C.A. § 6-54-302.

A city with a population of more than 32,000 that has a city court may, by ordinance, permit "service of process" by registered or certified mail with return receipt requested in "an action of debt involving non-payment of any ticket or citation issued for any nonmoving traffic violation". T.C.A. § 6-54-305.

Criminal Warrants and Summonses

T.C.A. §§ 40-6-205 and 215 establish procedures and requirements for the issuance of criminal arrest warrants and summonses.

Enforcement of Motor Vehicles and Traffic Rules

Reference Number: MTAS-830

Enforcement of Motor Vehicle Rules and Regulations — State Pre-emption

City ordinances may adopt by reference the state Rules of the Road that are Class C misdemeanors. T.C.A. § 16-18-302. See also T.C.A. § 55-10-307. Primary responsibility for enforcing state and local motor vehicle laws falls on municipalities within their city limits. In addition to or in lieu of any other penalty imposed, a court may require violators to attend a driver improvement course. The city may provide such a course and charge a fee of between \$50 and \$175. However, no person may be refused admittance because he or she cannot pay. T.C.A. § 55-10-301. T.C.A. § 55-8-196 allows a person sentenced to driver school to attend the school in his or her county of residence rather than in the county where the citation was issued, at the discretion of the court. A city offering a course consents to having its course records inspected by the Department of Safety. Certain violations are exclusively state offenses and must be prosecuted in courts with state jurisdiction. These violations include driving while intoxicated or drugged, failing to stop after an accident, driving with a suspended or revoked license, and drag racing. T.C.A. § 55-10-308.

Municipalities also may conduct community education courses for persons convicted of leaving a child in an unattended vehicle. Restrictions are similar to those for driver safety courses. T.C.A. § 55-10-804.

Enforcement of Traffic Rules and Regulations on Private Property

T.C.A. § 55-10-317 allows law enforcement agencies to enforce traffic laws on private streets in residential developments with single and multi-family dwellings. A majority of residents of the development must approve this in a petition to the governing body. The governing body must establish traffic laws in the development, just as it does for public streets. T.C.A. § 55-10-301.

With written permission from the property owner or manager, police officers may go onto the premises of any shopping center or office park that generally is open to the public to inspect any motor vehicle to determine if the vehicle is properly registered and licensed. T.C.A. § 55-10-316.

T.C.A. § 55-5-122(b) provides that subsection (a) of that section, which restricts the towing of vehicles on private property, does not restrict the authority of municipalities and metropolitan governments to regulate parking and towing of motor vehicles within their boundaries.

Traffic Citations

Reference Number: MTAS-592

Traffic Citations in Lieu of Arrest

When a person violates any traffic ordinance or regulation in the presence of a law enforcement officer, member of the fire or building department designated a special city police officer, or transit inspector employed by a public transit system, the officer or inspector may issue a citation or complaint in lieu of arresting the offender and having a warrant issued. The general provision in state law authorizing the issuance of a citation rather than a custodial arrest, T.C.A. § 40-2-118, does not apply to citations for

traffic or financial responsibility violations. Traffic and financial responsibility citations must be issued under T.C.A. § 55-10-207.

A copy of the citation, stating the offense charged and where and when to appear in court, must be given to the offender. T.C.A. § 7-63-101.

Financial Responsibility

T.C.A. § 55-12-139 requires law enforcement officers to require evidence of financial responsibility from a person charged with a moving traffic violation under state law, a local ordinance regulating traffic, or at the time of an accident causing injury or death or property damage greater than \$50. "Financial responsibility" generally means documentation of insurance. Failure to show evidence of financial responsibility is a Class C misdemeanor punishable by a fine of up to \$100. T.C.A. § 16-18-302 authorizes cities to adopt the financial responsibility law by reference. The maximum fine for an ordinance violation is \$50. T.C.A. § 55-12-139 also requires a court to dismiss a first-time offense if the offender, before the court date, submits proof of compliance as of the date of the violation, and it allows discretion for subsequent violations. No costs or litigation tax may be assessed for dismissal. When there is a traffic accident involving death or bodily injury, and the financial responsibility law violator was at fault, the offense is a Class A misdemeanor.

Uniform Traffic Citations

Municipal law enforcement officers may use a uniform traffic citation form prescribed by the Department of Safety. T.C.A. § 55-10-208.

Cancellation of Traffic Citation

A person is guilty of a misdemeanor if he cancels a traffic citation or seeks to have one canceled by any method other than that established by law. Records of citations required by T.C.A. § Title 55, Chapters 8 and 10, and issued by city police officers must be audited by the city's fiscal officer. T.C.A. § 55-10-204.

Citation Based Upon Traffic Camera

A traffic citation based solely upon evidence from a surveillance camera must be considered a non-moving violation.

Prior to the installation of a new unmanned traffic camera the municipality must conduct a traffic engineering study in accordance with the Institute of Transportation Engineers (ITE) standards which must be certified by a licensed engineer specializing in traffic engineering. No vendor may participate in the study or the selection of an engineer.

A new or renewed contract for traffic surveillance cameras and/or their operation must contain a provision stating that the contract will conform to any changes in state law. T.C.A. § 55-9-198.

No citation may be issued for making a right turn without coming to a complete stop, based solely upon traffic camera evidence, unless evidence shows the vehicle with a front tire before the stop line when the signal is red, and subsequently shows the same vehicle with a rear tire past the stop line while the signal is red. Violations for making a right turn at a red light where signage is posted to the contrary may be based solely upon camera evidence.

No citation based solely upon traffic camera evidence is permitted within one mile of a reduction of speed sign where reduction is 10 miles per hour or greater, except in a school zone where flashers are active.

A POST-certified officer must review video evidence and determine whether a violation occurred. If the officer determines that a violation did occur, a citation must be sent by first-class mail to the registered owner of the vehicle within 20 days of the alleged violation. The citation must allow for payment within 30 days of mailing. No additional penalty or costs may be assessed for non-payment unless a second notice is sent by first-class mail allowing for an additional 30 days. Fines for uncontested citations cannot exceed \$50.

The owner of the vehicle is responsible for the citation unless on or before the court date the owner provides an affidavit stating the name and address of the person who leased, rented, or had care, custody or control of the vehicle at the time of the violation. The owner also may provide an affidavit stating that the vehicle had been stolen prior to the time of the violation. T.C.A. § 55-8-198.

A municipality may not reduce the time of the yellow light at camera-enforced intersections to increase the number of traffic violations. T.C.A. § 55-8-110.

Any information regarding a citation based upon traffic camera surveillance evidence, including payment information, cannot be disclosed to a consumer reporting agency nor disclosed in any credit report. T.C.A. § 55-8-198.

Regulation of Bicycles

Reference Number: MTAS-593

Bicycles Subject to Traffic Rules

T.C.A. §§ 55-8-171–178 contain special rules for the operation of, and equipment required on, bicycles. Generally, bicycle riders are granted the same rights and are subject to the same rules of the road that apply to drivers of motor vehicles, except those that do not by their nature apply. T.C.A. § 55-8-152. T.C.A. §§ 55-9-602–603 contain an outline for the distribution of fines and costs for convictions under that law.

Child bicycle safety regulations also are found at T.C.A. §§ 55-52-101, et seq. These regulations:

- require children 16 years of age and under to wear a helmet that meets standards contained in the law when riding a bicycle upon any highway, street or sidewalk;
- require any passenger on a bicycle who weighs less than 40 pounds or is less than 40 inches tall to be properly seated and adequately secured to a restraining seat; and
- prohibit the rental or lease of any bicycle to, or use by, any person under 16 years of age unless the person is in possession of a protective helmet of good fit, or the rental or lease includes such a helmet "and the person intends to wear the helmet ... at all times while operating or being a passenger on the bicycle."

Any parent or guardian of a person under 12 years of age who knowingly permits that person to ride or be a passenger on a bicycle in violation of these regulations is subject to a civil penalty of \$2. Any other adult person who permits any person to ride or be a passenger on a bicycle in violation of these regulations is subject to the same penalty; however, the offender must be issued a warning on the first offense and a citation on the second and any subsequent offense. No arrest or custody of the offender is permitted in either case.

T.C.A. §§ 55-8-171–177 make the state's traffic regulations applicable to bicycles. Motorists overtaking a bicycle traveling in the same direction must leave a safe distance of at least three feet between the vehicle and bicycle. Violation is a Class C misdemeanor. T.C.A. § 55-8-175.

Emergency Vehicles - Safety

Reference Number: MTAS-848

Equipment on Emergency Vehicles

Every police and fire department vehicle must have a bell, siren, or exhaust whistle approved by the state Department of Safety or local police authorities. T.C.A. § 55-9-201. Blue flashing lights may be used only by full-time, salaried, law enforcement officers except in Knox County where reserve and auxiliary officers who are in uniform and operating a police vehicle may use them in conjunction with red flashing lights. T.C.A. § 55-9-414.

Authorized Emergency Vehicles

Rescue and emergency response vehicles owned by a state-chartered rescue squad, emergency lifesaving crew, or active unit of the Tennessee Association of Rescue Squads are included in the definition of "authorized emergency vehicle." T.C.A. § 55-8-101(2)(C)(ii).

Highway Safety Programs

Tennessee municipalities are authorized to carry out highway safety programs within their jurisdictions. These programs must be approved by the governor and must be in accordance with the secretary of commerce's uniform standards contained in provisions of the Federal Highway Safety Act of 1966. T.C.A. § 55-20-101.

Engine Compression Brakes ("Jake Brakes")

A municipality may implement a state law within the municipality that requires truck tractors and

semitrailers that use engine compression brakes to have an approved muffler (any muffler that complies with Federal Motor Carrier Safety Regulations on noise emissions compiled in 49 C.F.R., 325.1, *et seq.*) by requesting the state Department of Transportation to place signs. The municipality must pay for the signs. T.C.A. § 55-7-117.

Regulation of Electrical Personal Assistive Mobility Devices (EPAMDs)

Municipalities may reasonably regulate but not generally prohibit EPAMDs. The use of EPAMDs may be restricted or excluded in certain areas in the interest of public safety or the preservation of natural areas, but only to the extent that bicycles are restricted or excluded. Users must obey speed limits and yield to pedestrians and human-powered devices. EPAMDs are not considered motor vehicles under state law, so registration and licensing requirements do not apply. The device or the operator must be equipped with reflectors and lights when the device is operated one-half hour before and after sunset and one-half hour before sunrise. T.C.A. §§ 55-53-101, *et seq.*

Regulation of Low-speed and Medium-speed Vehicles

Municipalities may prohibit the operation of low-speed or medium-speed vehicles on any street in their jurisdiction in the interest of public safety. A "low-speed vehicle" is any four-wheeled electric or gas vehicle, except golf carts, whose top speed is 25 mph or less but greater than 20 mph (medium speed is greater than 30 mph but not more than 35 mph). Low-speed vehicles may be operated only on streets with a posted speed limit of 35 mph or slower and medium speed only on streets of 40 mph or lower. Operators must possess a Class D driver's license. T.C.A. §§ 55-1-122, 55-8-101, 191.

Police Officers

Reference Number: MTAS-237

Details of Police Work

State laws prescribe many details regarding what police officers can and cannot do. For example, highway patrol officers may stop vehicles for driver's license checks, but city police officers must have probable cause to believe an offense has been committed before they can stop a vehicle to merely check a license. T.C.A. § 40-7-103. Before using deadly force, a police officer, where feasible, must give notice of his identity as a police officer and give a warning that deadly force may be used. T.C.A. § 40-7-108. T.C.A. § 40-17-123 establishes detailed procedures police officers must use to subpoena documents and electronically stored data in gathering evidence in a criminal prosecution.

Minimum Standards

Reference Number: MTAS-394

Minimum Standards for Police Officers

T.C.A. §§ 38-8-101–106 establish the Tennessee Peace Officer Standards and Training Commission, assisted by the director and staff of the Tennessee Law Enforcement Training Academy. The commission is empowered to develop, plan, and implement training programs for all local law enforcement officers and to administer and enforce this law's provisions.

The following statutory minimum qualifications apply to any person who is employed as a full-time, part-time, temporary, reserve, or auxiliary police officer. The officer must:

- be at least 18 years old;
- be a U.S. citizen or a permanent legal resident of the U.S. and an honorably discharged veteran of the U.S. armed forces; provided that citizenship is obtained or applied for within six years of the employment start date with the law enforcement agency;
- have a high school or equivalent education
- not have a conviction or nolo contendere plea on any felony charge or law violation involving force, violence, theft, dishonesty, gambling, liquor, or controlled substances;
- not have any discharge from the U.S. armed forces other than honorable;
- have fingerprints on file at the Tennessee Bureau of Investigation;

- pass a physical exam by a licensed physician;
- have good moral character, as determined by a thorough investigation by the employing agency; and
- Have been certified by a Tennessee licensed health care provider qualified in the psychiatric or psychological field as being free from any impairment, as set forth in the current edition of the Diagnostic and Statistical Manual of Mental Disorders (DSM) of the American Psychiatric Association at the time of the examination, that would, in the professional judgment of the examiner, affect the applicants ability to perform an essential function of the job, with or without a reasonable accommodation.

Any person knowingly hiring or paying the salary of a person who fails to meet these qualifications is subject to a fine of up to \$1,000. The commission is directed to establish criteria for exceptions to or waiver of these qualifications based on a person's previous law enforcement experience and training. Waivers are prohibited for specified deficiencies. Appeals from denied waivers may be taken to the chancery court.

The commission shall issue a certificate of compliance to any person who meets the qualifications for employment and satisfactorily completes an approved recruit training program. All officers employed after July 1, 1983, must successfully complete recruit training within one year of their date of employment and thereafter must successfully complete an annual in-service training session appropriate for their rank and responsibilities.

Auxiliary Officers

Part-time, temporary, reserve, and auxiliary police officers must meet the same qualifications of age, education, citizenship, criminal record, and physical and mental fitness as full-time officers. T.C.A. § 38-8-106. They may work no more than 20 hours a week for a total of 100 hours per month. T.C.A. § 38-8-101(2).

Authority for Officer to Carry Firearms

Reference Number: MTAS-395

Authority of Law Enforcement Officers to Carry Firearms

T.C.A. § 39-17-1315 authorizes "any" law enforcement officer, police officer, county magistrate, retired police officer, and certain Tennessee Emergency Management Agency employees to carry handguns at all times, when authorized to do so by written directive of the chief law enforcement officer of the jurisdiction. A copy of the written directive must be retained by the issuing jurisdiction. This authorization also depends upon such officers completing and continuing to complete annually an eight-hour firearms training course. However, retired police officers are exempt from the firearms training requirement.

T.C.A. § 39-17-1350 authorizes law enforcement officers to carry firearms at all times and all places, while on or off duty, unless otherwise restricted by federal law, lawful orders of a court, or the "written directives" of the executive supervisor of the employing agency. A "law enforcement officer" for the purposes of this statute is "a person who is a full-time employee of the state in a position authorized by the laws of this state to carry a firearm and to make arrests for violations of some or all of the laws of this state, or a full-time police officer who has been certified by the peace officer standards and training commission." However, this law expressly does not extend to a law enforcement officer who:

- carries a firearm onto school grounds or in a school building unless the officer immediately notifies the principal or appropriate administrative staff;
- is consuming or is under the influence of alcoholic beverages or a controlled substance; and
- is not attending a judicial proceeding and is not engaged in the actual discharge of official duties as a law enforcement officer.

It is not clear whether the definition of "law enforcement officer" in T.C.A. § 39-17-1350 applies to T.C.A. § 39-17-1315.

Commissioned reserve or auxiliary police officers may carry firearms in the same manner and to the same extent as a full-time law enforcement officer if authorized to do so in writing by the chief of police. T.C.A. § 39-17-1350.

Notification of Next of Kin

Reference Number: MTAS-396

Notification of Next of Kin in Event of Death or Serious Injury

Police officers and other police employees are required to make a reasonable effort to notify the next of kin of any person killed or seriously injured in an accident before any statement disclosing the person's name is given to the press. The investigating officer shall make a determination whether a person is seriously injured. Neither the officer nor officer's employer shall be liable for the officer's opinion as to whether a person is seriously injured. T.C.A. § 38-1-106.

Police Training

Reference Number: MTAS-238

Police Training and Salary Supplement

Officers who complete acceptable recruit training and at least 40 hours of annual training are eligible to receive a salary supplement of \$600. The salary supplement shall not be used to supplant existing salaries or to substitute for normal salary increases. § 38-8-111.

Training on limits of using deadly force and on using citations in lieu of arrest is required. T.C.A. § 38-8-112, T.C.A. § 40-7-108. T.C.A. § 38-8-111(a) requires that police officers serving in the military receive their pay supplements if the military service prevented them from attending in-service training. Drivers of emergency vehicles also must receive two hours training each year in the operation of the emergency vehicle. Drivers also must pass a comprehensive examination. T.C.A. § 55-8-194.

A law enforcement officer employed directly by a judicial district drug task force is not entitled to the pay supplement for meeting the minimum certification requirements. T.C.A. § 8-7-110(a).

By a two-thirds vote of the entire membership of its governing body, a municipality or county may establish an in-service training program for "certified correctional officers," which may include a cash supplement plan. T.C.A. § 38-8-111(d).

Assistance from Law Enforcement Training Academy

The director of the state Law Enforcement Training Academy is authorized "upon the request of the chief official of any law enforcement agency of ... a municipality ... to designate one or more of the commissioned instructors at the institute to assist such agency in its law enforcement role." An instructor so designated is supervised by the agency's chief officials and receives no compensation other than that of an instructor. T.C.A. § 38-8-207.

Additional Training Required

By July 1, 2017, or within six months of being hired as a full-time law enforcement officer, whichever is later, an officer who is assigned to the field or has investigative duties is required to complete a minimum of two hours of training on human trafficking. The TBI is required to implement the training by January 1, 2016. T.C.A. §38-6-125.

Police Overtime

Reference Number: MTAS-1183

The Fair Labor Standards Act (FLSA) was passed during the recovery from the Great Depression and deals primarily with the minimum wage and overtime. The act did not initially include government employees. A series of amendments to the act and subsequent court decisions extended coverage to government employees a little more than 30 years ago. The most significant of the court decisions was *Garcia v. San Antonio Metropolitan Transit Authority* (1985).

The act can be enforced by private lawsuits brought by employees or by actions of the Wage and Hour Division of the U.S. Department of Labor (DOL). There is a two-year statute of limitations, but the employer may be liable for back wages for three years if it is determined that the employer willfully withheld overtime pay.

There are some differences in the application of the act in relation to government employees as opposed to private employees. The act allows employers to dock exempt public employees for less than a full day as long as the employee was subject to a pay system “established by statute, ordinance or regulation or by a policy or practice established pursuant to principles of public accountability.” 29 C.F.R. § 541.710. There is additional discussion about exempt employees later in this section.

Compensable Time

Reference Number: MTAS-1185

Understanding the concept of “hours worked” is crucial to complying with the FLSA. According to the U.S. Supreme Court [*Tn. Coal, Iron & R.R. Co. v. Muscodol Local No.123*, 321 U.S. 590 (1944)], an employee must be compensated for “all time spent in physical or mental exertion (whether burdensome or not) controlled or required by the employer and pursued necessarily and primarily for the benefit of the employer.”

The courts and the U.S. Department of Labor, however, have recognized that insubstantial or insignificant periods of time outside scheduled working hours may be disregarded in recording working time. 29 C.F.R. § 785.47. The rule applies only where a few minutes of work are involved and where the failure to count such time is due to considerations justified by “operational realities.” Such time is called “de minimis” (i.e., minor or trivial). The Portal-to-Portal Act of 1947 helps clarify the working-time issue. (See the discussion of the Portal-to-Portal Act in this section under Travel Time.)

Employees who, with the knowledge or consent of their employer, continue to work after their shifts are over, though voluntarily, are engaged in compensable working time. The reason for the work is immaterial; as long as the employer “suffers or permits” employees to work on its behalf, overtime compensation may be due. 20 C.F.R. § 785.11. This is true whether the work takes place at the place of business or at the employee’s home. For example, activities such as filling out reports, attending “roll call,” and returning to the station after completing a call are all compensable work if done at the employer’s behest and for the employer’s benefit.

Fringe Benefit Time

Reference Number: MTAS-1186

Fringe benefits provided by the employer are not considered compensable under the act. Fringe benefits include vacation time, holidays, funeral leave, paid jury duty, and paid weather-related closings. The FLSA does not even address these types of fringe benefits. The extent to which an employer provides fringe benefits, or does not provide them, is entirely up to the employer. Time that an employee takes off with or without pay for any provided fringe benefit does not count as compensable time for the purposes of calculating overtime.

Wait Time

Reference Number: MTAS-1187

Whether waiting time is compensable depends on the particular circumstances. The FLSA requires compensation for all time during which employees are required to wait while on duty or performing their principle activities. 29 C.F.R. § 785.15. This is particularly true where waiting periods are of such short duration that employees cannot use them for their own benefit.

Under the regulations (29 C.F.R. § 785.16), waiting time by an employee who has been relieved from duty need not be counted as hours worked, if:

1. The employee is completely relieved from duty and allowed to leave the job; or
2. The employee is relieved until a definite, specific time; and
3. The relief period is long enough for the employee to use the time as he or she sees fit.

A police officer waiting to testify in a court case, a detective waiting for a witness to arrive to be interviewed, and an officer waiting for a tow truck to arrive are all working during their periods of inactivity. The rule also applies to an employee who works away from the employer’s premises.

Employees who wait before starting their duties because they arrived at the work place earlier than the required time are not entitled to be paid for the waiting time as long as the employee does not engage in work activity during that time.

DOL has defined “off duty” as:

[P]eriods during which an employee is completely relieved from duty and which are long enough to enable the employee to use the time effectively for his/her own purpose are not hours worked. The employee is not completely relieved from duty and cannot use the time effectively for his/her own purposes unless the employee is definitely told in advance that he or she may leave the job and that the employee will not have to commence work until a specified hour has arrived. DOL W.H. Publication 1459 (May 1985).

On-call Time

Reference Number: MTAS-1188

On-call time is time spent by employees in their own pursuits, usually away from the working premises, when the employee must remain available to be called back in to work on short notice, such as with a police detective. 29 C.F.R. § 785.17. The FLSA requires employers to compensate their workers for on-call time when such time is spent “predominantly for the employer’s benefit.” The regulations state that:

[A]n employee who is required to remain on-call on the employer’s premises or so close thereto that he cannot use the time effectively for his own purpose is working while “on-call.” An employee who is not required to remain on the employer’s premises but is merely required to leave word at his home where he may be reached or carries a pager or cell phone is not working while on-call

On-call time has become a contentious issue with the proliferation of cellular telephones and pagers. Many law enforcement employers require employees to maintain a working telephone to facilitate “call back” to duty in an emergency. Many employees use cellular telephones as their only telephone. Even if the telephone or pager is provided by the employer, requiring the employee to have a telephone or pager does not mean that the employee is “working” while off duty, even if the employee is “on-call,” as long as the employee is free to pursue personal activities during the on-call time.

It is important to note that on-call payments may alter an employee’s regular rate of pay. If the employer chooses to pay the employee for on-call time (for example, a specified amount of money or number of hours to be paid during the period of time the employee is “on-call.”), that would not otherwise be considered hours worked under the regulation. The additional compensation must nevertheless be included in the employee’s rate of pay calculation, thus increasing the hourly rate used to compute overtime pay. Of course, all payment for time actually worked must also be included in the regular rate calculation. 29 C.F.R. § 778.223.

Once the employee arrives at work after being called into service, all working time must be compensated. If this pushes the hours worked above the overtime threshold for the work period, overtime must be paid.

Staff Breaks and Meals

Reference Number: MTAS-1189

Break periods, such as lunch or dinner meals or rest periods, may or may not be compensable depending on whether the employee is completely relieved from duty and the amount of time allocated for the activity. The FLSA does not require that employees be given rest periods, 29 C.F.R. § 785.18, but if rest periods are provided, they must be counted as hours worked if they last 20 minutes or less [*Mitchell v. Turner*, 286 F.2nd. 105 (5th Cir. 1960); *Mitchell v. Grienetz*, 235 F.2nd. 621 (10th Cir. 1956); and *Aeromotive Metal Products, Inc. v. Wirtz*, 312 F.2nd 728 (9th Cir 1963)]. Coffee and snack breaks are compensable rest periods and cannot be excluded as meal periods from hours worked. Whether rest periods that last longer than 20 minutes are compensable depends upon an employee’s freedom during breaks.

A bona fide meal time, when the employee is completely relieved from duty, is not work time. 29 C.F.R. § 785.19. Short periods, such as coffee or snack breaks, are not considered meal time. Of course, if an

employee works during the meal, the time is compensable. Whether or not an employee's meal period can be excluded from compensable working time depends on the employee "freedom meal test." 29 C.F.R. § 785.19.

Unless all of the following three conditions are met, meal periods must be counted as hours worked:

1. The meal period generally is at least 30 minutes;
2. The employee is completely relieved of all duties. If the employee must sit at a desk and incidentally answer the telephone, as a dispatcher might often do, this would be compensable time; and
3. The employee is free to leave his or her duty station. There are no requirements, however, that the employee be allowed to leave the premises or work site.

Meal time spent out of town on business trips, such as at out-of-town training programs, is not generally compensable time. 29 C.F.R. § 785.39. If, however, an employee works during the meal, such time is compensable.

Any volunteer work done during meal periods must be counted as compensable working time if the employer knows or has reason to believe the work is being performed. If the employer does not know of the work, and the employee's work during meal time is essentially de minimis, no compensation is required. *Baker v. United States*, 218 Cl. Ct.602 (1978).

Training Programs

Reference Number: MTAS-1190

DOL regulations make clear that attendance at a bona fide police academy or other training facility, when required by the employing agency, constitutes engagement in law enforcement activities outlined in 29 U.S.C. § 207(k). Therefore, basic and advanced training is considered part of the employee's law enforcement activities. Time spent in actual training constitutes compensable hours of work.

Time spent studying or in other personal pursuits is not compensable even if the employee is confined to campus, such as at a police academy, 24 hours a day (Wage and Hour Opinion, February 5, 1990). Police officers who attend a police or other training facility are not considered to be on duty during the time they are not in class or training, as long as they are free to use such time for personal pursuits. 29 C.F.R. § 553.226(c).

When officers are assigned to in-service training classes, the time is considered compensable hours of work. In-service pay supplements provided by the state for completing state-mandated in-service training are just that: supplements. The state training supplement payment is not payment for the hours worked. The employer is responsible for compensating the employee for the hours worked during in-service training.

Staff Travel Time

Reference Number: MTAS-1191

Whether travel time is compensable or not depends entirely on the kind of travel involved. Under the Portal-to-Portal Act, the employer generally is not responsible for time spent by the employee in walking, riding, or otherwise traveling to and from the actual place of performance of the principle activities. 29 U.S.C. § 254(a). Excluding normal commuting time, the general rule is that employees should be compensated for all travel unless it is overnight, outside the regular working hours, on a common carrier, or where no work is done. Generally, an employee is not at work until he or she reaches the work site.

An employee who drives a police car home does not have to be compensated for commute time simply because he or she is operating the employer's vehicle, so long as it is for the employee's convenience. *Field Operations Handbook* § 31c01. According to the Wage and Hour Letter, April 13, 1995, an employee does not have to be compensated if all of the following conditions are met:

- Driving the employer's vehicle between the employee's home and the work site is strictly voluntary and not a condition of employment;
- The vehicle involved is the type of vehicle that would normally be used for commuting;

- The employee incurs no cost for driving the employer's vehicle or parking it at home; and
- The work sites are within the normal commuting area of the employer's establishment.

In certain rare emergency situations, the regulations (29 C.F.R. § 785.36) provide that an employee must be compensated for home-to-work travel time. Generally, if an employee, after completing a day's work, is called at home and must travel a "substantial distance" to perform an emergency job, the travel time is compensable.

Out-of-town travel is a bit more complicated because DOL takes the position that out-of-town travel is not ordinary home-to-work travel. Because the travel is performed for the employer's benefit and at the employer's request, the employee must be compensated. Not all the travel, however, needs to be counted as hours worked. DOL specifically permits the employer to exclude the travel time between the employee's home and an airport, bus, or railroad station. 29 C.F.R. § 785.39.

The regulations provide that travel time is compensable work time when it occurs during the employee's regular working hours. DOL does not count as working time overnight travel that occurs outside of regular working hours as a passenger on an airplane, train, boat, bus, or car and where the employee is free to relax. 29 C.F.R. § 785.39. If an employee is required to drive or required to ride while another employee drives, the employee must be compensated for the travel time (29 C.F.R. § 785.41) except when the employee is on a bona fide meal break.

Examples of Compensable Working Time

Reference Number: MTAS-1192

The following are examples of working time for which an employee is entitled to be compensated:

- Caring for tools that are a part of principal activities, such as guns by police officers. *Cooley v. United States*, 26 Wage & Hour Cas. (BNA) 50 (Fed.Cir. 1983);
- Charitable work requested or controlled by the employer. 29 C.F.R. § 785.44;
- Emergency work/travel time. 29 C.F.R. § 785.36;
- Disaster drills, whether voluntary or involuntary, either during or after regular working hours. *Field Operations Handbook* § 31b15;
- Meal periods if (a) employees are not free to leave their posts or (b) the time is too short to be useful to employees. 20 C.F.R. § 785.19;
- Medical attention during working hours at the employer's direction. 29 C.F.R. § 785.43;
- On-call time where liberty is restricted. 29 C.F.R. § 785.17;
- Preparatory work that is a part of the principal activity. *Lindow v. United States*, 738 F.2d 1057 (9th Cir 1984);
- Principal activities: patrol, investigations, etc. 29 C.F.R. § 790.8;
- Rest periods of 20 minutes or less. 29 C.F.R. § 785.18;
- Training in regular duties to increase efficiency. 29 C.F.R. § 785.29;
- Training programs required by the employer. 29 C.F.R. § 785.27;
- Travel (but not performing work) from one work site to another or traveling out of town during working hours. 29 C.F.R. §§ 785.38 and .39;
- Waiting for work after reporting time or while on duty. 29 C.F.R. § 785.15; and
- Cleaning and maintaining police vehicles if the officers are responsible for those tasks. Wage and Hour Opinion Letter, Dec. 30, 1985.

Examples of Non-Compensable Time

Reference Number: MTAS-1193

The following are examples of work-related matters for which an employee need not be compensated:

- Absences (including sick leave, annual leave, holidays, funerals, and weather-related absences). 29 C.F.R. § 778.218(d);
- Athletic contest involvement as a participant, official, or scorer, even if sponsored by the employer, so long as it is voluntary and not a condition of employment. *Field Operations Handbook* § 31b05;
- Charitable work done voluntarily outside working hours. 29 C.F.R. § 785.44;
- Holidays on which an employee does not work. 29 C.F.R. § 778.218(d);
- Jury duty. 29 C.F.R. § 778.218(d);
- Meal periods involving no duties and lasting one-half hour or longer. 29 C.F.R. § 785.19;
- Medical attention outside of working hours or not at the direction of the employer. 29 C.F.R. § 785.43;
- On-call time when the employee merely leaves a telephone number or carries a pager or cell phone and is not restricted. 29 C.F.R. § 785.17;
- Operating an employer's motor vehicle for the employee's own commuting convenience. *Field Operations Handbook* § 31c02;
- Training programs voluntarily attended that are unrelated to regular duties and involve no productive work. 29 C.F.R. § 785.27;
- Travel (a) from home to a work site and vice versa (29 C.F.R. § 785.35), or (b) on overnight trips during nonworking hours except while performing duties or other work. 29 C.F.R. § 785.39; and
- Waiting time (a) in a paycheck line, (b) to check in or out, or (c) to start work at a designated period. 29 C.F.R. § 790.7(g).

Staff Overtime Pay

Reference Number: MTAS-1194

The FLSA does not limit the number of hours that an employee may work, either daily or weekly. The act creates an overtime "threshold," and all hours worked in excess of the threshold must be compensated at a premium rate of pay one and one-half times the normal rate of pay. 29 U.S.C. § 207 (a)(1). For most employees, the overtime threshold is 40 hours in a workweek, but the act contains an exemption for fire and police personnel, which allows longer work periods. The threshold for law enforcement personnel is based on the length of the work period.

The act does not require overtime pay for hours worked in excess of a scheduled shift on any given day or for hours worked on a regularly scheduled off day. Under the act, overtime applies only to hours worked in excess of the overtime threshold for the entire work period.

Work Periods

Reference Number: MTAS-1195

The standard work period for most employees, such as dispatchers and secretaries, is one week (seven days). The law enforcement exemption allows work periods from one week to four weeks (seven days to 28 days). Most employers will use one-week increments for work periods, and the most prevalent work periods are one week, two weeks, and four weeks. 29 C.F.R. § 553.230.

It should be noted that work periods are not necessarily the same as pay periods. For example, an employer may have a one-week work period but a two-week pay period. Two-week pay periods are actually quite common. If the work period is one week, as it always is for non-public safety employees, overtime is calculated for each of the one-week work periods in the pay period.

The employer can have pay periods that are shorter than the work period. This is very common for fire departments and, to a lesser degree, police departments, especially police departments working 12-hour shifts. Overtime is calculated at the end of the work period, encompassing both pay periods.

There is a longer discussion later in this publication of the benefits of longer work periods when an employer uses shifts longer than the traditional eight-hour shift.

Work periods longer than one week only apply to bona fide police officers. Persons performing clerical duties or dispatcher duties are not bona fide police officers, even if the employer designates them as such. The definition applies to the duties performed by the employee, not the title of the employee. For employees with varied job duties, the tasks performed the majority of the time determine the employee's status. For example, if a police officer occasionally works as a dispatcher, the officer would still be subject to the law enforcement exemption.

Overtime Threshold

Reference Number: MTAS-1196

The overtime threshold is determined by the length of the work period. For non-public safety employees the work period is always one week, and the overtime threshold is 40 hours. For law enforcement officers the work period may be longer.

Non-law Enforcement Officers

Includes dispatchers, clerks, secretaries, and civilian parking control officers.

- One-week work period threshold 40 hours overtime

Law Enforcement Officers

- One-week work period: overtime threshold is 43 hours
- Two-week work period: overtime threshold is 86 hours
- Four-week work period: overtime threshold is 171 hours
29 C.F.R. § 553.230.

Once the number of hours actually worked in the work period exceeds the overtime threshold, the employee must be compensated at one and one-half times the normal rate of pay. It does not matter how many hours an employee works in any given day during the work period, whether the day fell on a holiday, or whether the work was on a regularly scheduled day off; overtime is calculated on the total number of compensable hours worked *in excess of the overtime threshold for the work period*.

Canine Handlers

Reference Number: MTAS-1197

Many police departments have drug dogs, bomb dogs, or general patrol dogs. The officers assigned to handle these dogs usually care for the animals at their homes and sometimes train the dogs outside their normal work schedules. This constitutes time worked, and the time must be compensated. The employer cannot allow the employee to volunteer to care for the animal. Wage and Hour Opinion Letters, Dec. 30, 1985, June 13, 1989, and Aug. 11, 1993.

Since the employee is caring for the animal at home, there is no way to monitor the time an employee actually spends caring for the animal. Monitoring can be accomplished by establishing a policy dictating how much time the employee will spend each day caring for the animal. Courts have held that 30 minutes a day can be an adequate amount of time to care for the animal, but the employer should establish what it deems as a reasonable amount of time. If the handler also trains the animal outside the regular work schedule, this time should be built into the policy.

Of course, any unexpected time, such as emergency visits to a veterinarian, should be counted as additional time worked.

Trading Shifts

Reference Number: MTAS-1198

Police officers may trade shifts or substitute tours of duty with another employee without the employer being subject to additional overtime by virtue of one employee working the additional hours during the work period. The following criteria must be met in order for there to be no effect on hours worked:

- Substitution or trading is done voluntarily; and
- The substitution or trading is approved by the employer.

29 U.S.C. § 207 p(3).

The employees' decision to substitute for each other must be made without any coercion by the employer, and they should be free to refuse the substitution without sanction or explanation. There is no requirement that the employer maintain a record of the time traded or substituted, nor is there any period of time for which the time traded must be paid back by the other employee. 29 C.F.R. § 553.31.

Small Police Departments

Reference Number: MTAS-1199

Police departments with fewer than five total officers, including the chief of police, are exempt from the overtime requirements of the FLSA. This number also includes any part-time officers, regardless of the number of hours they work. 29 C.F.R. § 553.200.

How Work Periods Impact Overtime

Reference Number: MTAS-1200

Law enforcement officers generally will have to work some hours outside the normal work schedule, most often for court appearances or to complete a call for service at the end of a shift. These events occur sporadically, and the impact can be "leveled" by using longer work periods. For example:

If an employee is on a **one-week** work *period*:

- The employee is scheduled to work a normal 40-hour week and works each of the scheduled days.
- The employee works two additional hours at the conclusion of a regular shift.
- The employee has to attend court for three hours while not scheduled to work.
- Total number of hours worked for the week and the work period: 45 hours.
- Number of hours above the overtime threshold of 43 hours is two.
- *Two hours must be compensated at one and one-half times the normal rate of pay.*

The following week:

- The employee works the normal 40-hour shift with no additional hours worked.
- The employee is paid for 40 hours with no overtime.

But, if an employee is on a **two-week** work period and works exactly the same number of hours in each of the two weeks as described above:

- The employee is scheduled to work a normal 40-hour week and works each of the scheduled days.
- The employee works two additional hours at the conclusion of a regular shift.
- The employee has to attend court for three hours while not scheduled to work.

Then, the following week:

- The employee works the normal 40-hour shift with no additional hours worked.

- The total number of hours worked for the two-week work period is 85.
- The overtime threshold for the two-week work period is 86 hours. *The employee will be paid for 85 hours at the regular hourly rate of pay with no overtime.*

The use of a longer work period can lessen the impact of extra hours worked in any given week over the course of the work period. While the savings for the scenario described above may seem small, the savings of valuable resources over the course of the year can be substantial.

Longer work periods also give the employer an opportunity to relieve the employee of duty a couple or more hours before the end of the work period, avoiding extra pay altogether. For example, if an employee works two extra hours attending court early in the work period, the employer can relieve the employee of duty two hours early on a regularly scheduled shift later in the work period.

Fringe Benefit Time and Work Periods

Reference Number: MTAS-1202

If an employee is on a one-week work period:

- The employee actually works 46 hours in a week (whether by the scheduled shifts or due to extra hours worked outside the schedule).
- Number of hours in excess of the overtime threshold is three.
- *Three hours must be compensated at one and one-half times the normal rate of pay.*

The following week:

- The employee takes the week off on vacation.
- *The employee is paid for 40 hours of vacation.*

Now, let's consider the impact if the employee is on a two-week work period:

- The employee actually works 46 hours in a week (whether by the scheduled shifts or due to extra hours worked outside the schedule).

The following week:

- The employee takes the week off on vacation.
- The employee actually worked 46 hours in the work period and is paid for an additional 40 hours of vacation time.
- *The overtime threshold for a two-week work period is 86 hours. Since the employee worked only 46 hours in the work period, the employer pays the employee for 46 hours at the regular rate of pay and for 40 hours of vacation time at the regular rate of pay. There is no overtime for the work period.*

For the purposes of illustration, these examples have used one- and two-week work periods. The "leveling" impact is increased with a four-week work period. The four-week work period is particularly advantageous when the police department uses longer shifts, such as 12-hour shifts. Twelve-hour shifts often result in significant fluctuations in the number of hours worked from one week to the next. The use of 12-hour shifts most often results in employees being scheduled to work 48 hours in some weeks and 36 hours in other weeks. It is difficult to "level" the number of hours worked in a two-week work period, let alone a one-week work period. The following example illustrates how a four-week work period is scheduled.

Twelve-hour Shifts

Reference Number: MTAS-1201

In the most prevalent 12-hour shift schedule officers work four days, followed by four days off. Obviously, the eight-day cycle of work days and off days does not correspond to a seven-day week. In any given one-week work period, the number of hours scheduled, let alone the number of hours actually worked, will fluctuate between 48 hours and 36 hours. For a one-week work period, the 48 hour weeks

create five hours of overtime pay (five hours in excess of the 43 hour overtime threshold). Even with a two-week work period the schedule will create fluctuations in the number of hours scheduled to be worked from one work period to another. As you can see from the following table, a four-week work period provides a consistent number of hours scheduled for each work period. The 168 hours scheduled for each four-week work period is less than the 171 hours overtime threshold for a four-week work period.

| SUN | MON | TUE | WED | THU | FRI | SAT | Hours | |
|------|------|------|------|------|------|------|-------|--------------|
| Work | Work | Work | Work | | | | 48 | 168 Hours |
| | Work | Work | Work | Work | | | 48 | |
| | | Work | Work | Work | Work | | 48 | |
| | | | Work | Work | Work | Work | 48 | |
| | | | | Work | Work | Work | 36 | |
| Work | | | | | Work | Work | 36 | |
| Work | Work | | | | | Work | 36 | |
| Work | Work | Work | | | | | 36 | |

Schedule then repeats.

Staff Compensatory Time

Reference Number: MTAS-1203

The employer may choose to compensate employees for overtime with cash or with time off in the future, called compensatory time. Compensatory time is treated the same as cash payments for overtime. All hours worked in excess of the overtime threshold must be compensated at one and one-half times the employee's normal rate of pay. That pay can be cash, compensatory time, or a combination of the two.

Just as an employer can compensate an employee with one and one-half times the rate of pay for overtime, the employer may also compensate the employee with time at one and one-half times the number of overtime hours worked. Assume that an employee works four hours in excess of the overtime threshold for a given work period. The employer could compensate the employee with six hours of compensatory time ($4 \times 1.5 = 6$), or the employer can compensate with a combination of cash and compensatory time. For instance, the employer could pay straight time for the four hours worked in the example above and add two hours of compensatory time for accrual.

Compensatory time is accrued over time (essentially banked for future use). The employer may not refuse a request by the employee to take the time off unless taking the time off would interfere with the ability of the employer to provide police services. Conversely, the employer may require the employee to take accrued time off, even scheduling the employee to be off using accrued compensatory time.

The maximum amount of time that an employee may accrue is 480 hours for law enforcement officers. Non-law enforcement officers may accrue only 240 hours. Once an employee accrues the maximum number of hours, the employer must compensate for overtime with cash. The employer may set its own maximum at a level less than the federal maximum but cannot exceed the federal maximum.

When an employee separates from employment, he or she must be paid for all accrued overtime at the employee's current rate of pay. The employer cannot take compensatory time away from an employee. The time must be taken off or the employee must be paid for accumulated time. 29 C.F.R. § 553.20.

Exempt Employees

Reference Number: MTAS-1204

Certain employees meeting specific criteria may be exempt from the overtime requirements. While many people use the terms “salaried” or “hourly,” those terms are not always correct. An employee who is not subject to overtime is considered to be “exempt.” An employee who is entitled to overtime pay for hours worked in excess of the overtime threshold is considered to be “nonexempt.”

To be exempt from overtime an employee must meet three tests. First, the employee must be paid on a salaried basis, although some salaried employees may not be exempt from overtime. Second, the employee must be paid at least \$455 per week or \$23,659.92 per year. Third, the employee must meet the job duties test. There are three classifications of exempt employees for the job duties test. They are the executive exemption, the administrative exemption, and the professional exemption.

Executive Exemption

Reference Number: MTAS-1205

The employee must:

- Be paid on a salaried basis and meet the minimum salary test;
- Have the primary duty to manage the department or subdivision;
- Customarily direct the work of two or more employees; and
- Have authority to hire or fire employees *or whose recommendations for hiring, firing, promotion, etc., are given particular weight.*

Most police chiefs meet the above tests. Division commanders and other command officers may meet the test, depending on their level of responsibility and authority. In many cities, the chief and certainly division commanders do not have the authority to hire, fire, or demote employees, but their recommendations are given considerable weight by those who do have that authority.

Concurrent performance of exempt and nonexempt work does not automatically disqualify an employee from the exemption. For instance, a police chief or other exempt employee may have the discretion to perform line level, nonexempt duties and still remain responsible for the success or failure of the department's operations.

Staff Administrative Exemption

Reference Number: MTAS-1206

The employee must:

- Be paid on a salaried basis and meet the minimum salary test;
- Perform office or non-manual work in management or operations of the employer or employer's customers; and
- Have a primary duty that includes exercising discretion and independent judgment on matters of significance.

This class of exempt employee may include administrative officers who do not directly supervise other employees. Some factors to consider in determining whether an employee meets these tests include:

- Work must be directly related to assisting with the running of the business;
- Discretion and independent judgment must be exercised with respect to “matters of significance”;
- The employee must have authority to formulate, affect, interpret, or implement management policies or operating procedures.

Staff Professional Exemption

Reference Number: MTAS-1207

The employee must:

- Be paid on a salaried basis and meet the minimum salary test;
- Have a primary duty to perform work requiring advanced knowledge or invention, imagination, or originality;
- Work in a field of science or learning or talent in a recognized field of artistic or creative endeavor; and
- Use knowledge customarily acquired by a prolonged course of specialized intellectual instruction.

The professional exemption rarely applies in police departments. Some examples include police attorneys or police psychologists. 29 C.F.R. § 541.

Volunteers

Reference Number: MTAS-1208

A bona fide volunteer is defined as an individual who performs hours of service for a public agency for civic, charitable, or humanitarian reasons. Moreover, a volunteer performs these services without promise, expectation, or receipt of compensation for services rendered. The overtime provisions of the FLSA prohibit an employee from volunteering to perform duties that are part of the employee's job. The prohibition also covers charitable work when the employer controls the activity. For instance, a police department cannot *compel* a police officer to perform unrelated work, such as running a booth at a fair.

An employee can volunteer to perform unrelated work when the work is not a condition of employment in employee's primary job. Examples of volunteer work might include:

- Coaching a city-sponsored youth athletic team;
- Serving as a volunteer firefighter when the two departments are distinctly separate and not part of a joint public safety department; or
- Serving as a member of a local board or committee.

29 C.F.R. § 553.103.

Paid Employment in an Unrelated Job

Reference Number: MTAS-1209

Employees can work another *unrelated job* on an occasional or sporadic basis with the employer at the same or a different rate of pay without the hours of the second job counting toward overtime in the primary job. A police officer could work as a summer lifeguard at a city swimming pool, and the hours worked in that job could be separated from the hours worked with the police department for the purposes of computing overtime. 29 C.F.R. § 553.212(a).

Assuming the officer is scheduled to work 40 hours per week as a police officer and eight hours per week as a lifeguard, the eight hours worked as a lifeguard do not have to be added to the police work time to compute overtime.

The employer should be very careful to ensure that the secondary work is completely different from the work performed in the primary job and that the employee chooses to work the secondary job, rather than being assigned the duties. To retain the 207(k) exemption (work periods that are more than one week in length and a higher overtime threshold), the unrelated secondary work must be sporadic, occasional, or seasonal.

Seizure of Property

Reference Number: MTAS-404

Seizure of Illegal Liquor

City police officers have a duty to search for and capture illicit stills and associated paraphernalia. They also are required "to summarily destroy and render useless such property" and "all whiskey, beer, or other intoxicants" found at or near the site except beverages on which a federal tax has been paid. Such destruction must take place in the presence of "at least two credible witnesses." Within five days thereafter, the officer must file a written statement of all items destroyed with the circuit or criminal court clerk of the county where seized and furnish a copy to the state Alcoholic Beverage Commission. T.C.A. § 57-9-101. Any illegally held or transported intoxicating liquors on which a federal tax has been paid and that have been seized by a city police officer must be turned over to the sheriff within five days. After subsequent sale by the state, the proceeds minus 10 percent are to be remitted to the city. T.C.A. § 57-9-106, T.C.A. § 57-9-115.

Seizure of Vehicle for DUI

A vehicle used in the commission of a person's second or subsequent DUI conviction is subject to seizure and forfeiture, upon conviction. (Effective July 1, 2003, a blood alcohol concentration level of .08 percent while operating a vehicle constitutes DUI.) A vehicle used in violation of the statute on driving with a suspended or revoked license due to a DUI conviction also is subject to seizure and forfeiture, and the seizure can take place at the time of arrest. Revenue from the sale of such vehicles remains with the local government responsible for the seizure to pay the reasonable and direct expenses of confiscation, towing, storage, and sale. Remaining revenue must be transmitted to the Department of Health by June 30 of each year. T.C.A. § 40-33-211.

Seizure of Vehicle for Arson

Vehicles used in arson crimes also are subject to forfeiture. T.C.A. § 39-14-307.

Seizure of Vehicle for Promoting or Patronizing Prostitution

The vehicle in which a second or subsequent offense of promoting or patronizing prostitution is committed is subject to seizure and forfeiture. A seizure may not be made before conviction. The violations must occur in Tennessee on or after July 1, 2002, and the second or subsequent offense must occur within five years of the prior offense. T.C.A. § 29-3-101.

Seizure of Property Used in Sex Crime

Vehicles and other property used in certain sex crimes are subject to seizure and forfeiture. Proceeds from forfeitures accrue to the state to be allocated to the child abuse fund. T.C.A. § 40-33-211(h).

Seizure of Property Used in Drug Offenses

Property used to commit drug offenses, such as vehicles, aircraft, or boats, and property acquired with the proceeds of drug felonies, may be taken through a civil procedure instituted by the district attorney or through an administrative procedure before the commissioner of safety and sold at public auction. Sale proceeds are earmarked for the city's drug enforcement program and certain other law enforcement expenses. Any vehicle seized may be used in the local drug enforcement program for not more than five years. T.C.A. § 39-17-420, T.C.A. §§ 53-11-201-204.

Seized Conveyances Used in Robberies or Felony Thefts

Sale proceeds from a vehicle, an aircraft, a vessel, or other conveyance forfeited because of use in a robbery or felony theft go to a city if the property was seized by its law enforcement personnel. The property must be used exclusively for law enforcement. T.C.A. § 40-33-110.

Seizure of Commercial Vehicles

When seizing a commercial vehicle that the driver does not own, officers are required to make reasonable efforts to determine the name of the owner and to notify him or her of the seizure. Rental cars are included in the protection afforded by this statute. Forfeiture of commercial vehicles is governed by special rules based on ownership of the vehicle. T.C.A. §§ 40-33-201, *et seq.*

Police Retention Schedule

Reference Number:

MTAS-1925

For retention schedule documents that apply to police records, review our Records Retention Schedules, MTAS-693 [2].

Links:

[1] <http://www.comptroller.tn.gov/la/pdf/2012ProceduresForCashTransactions.pdf>

[2] <http://www.mtas.tennessee.edu/reference/police-records-schedule>

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