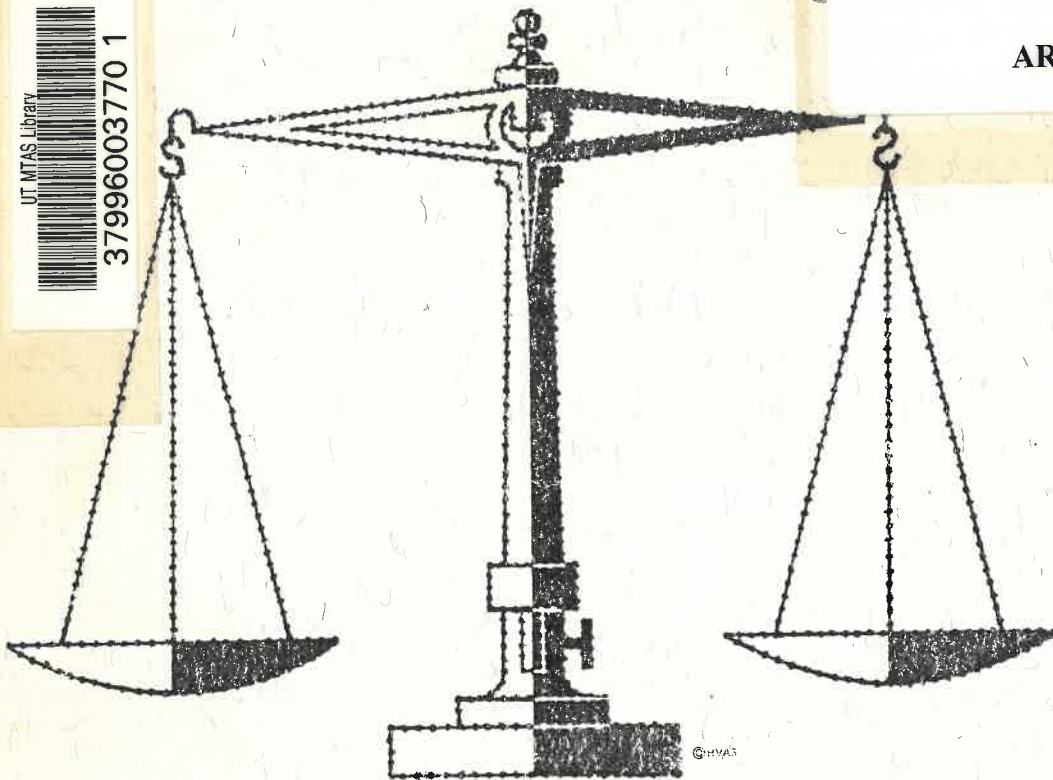


Court-Municipal

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MUNICIPAL COURT GUIDE

BY WILL D. SWANNER

MAY 2 1974

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In cooperation with the TENNESSEE MUNICIPAL LEAGUE

M U N I C I P A L
C O U R T
G U I D E

by

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INSTITUTE FOR PUBLIC SERVICE
THE UNIVERSITY OF TENNESSEE

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PREFACE

This guide is a compilation of fifty one topics which deal largely with procedure rather than with substantive law. Much of the content is from the laws of Tennessee and in most instances the language of the law is used.

Preparation of this guide was rendered difficult because of the many areas relating to the functions of the city court which are not covered by either statute or case law. Anyone researching the jurisdiction of municipal courts in this state becomes involved in a tangle of situations as a result of the numerous sources from which these jurisdictions are acquired. Some arise out of general statute law, some out of general law charters, and others out of private acts charters. Obviously, all city courts have a common denominator. They are required to hear all cases in violation of the city ordinances of their particular towns or cities. The similarity, in some instances, ends at this point because the amount of the fine or the penalty that may be assessed for such violations and the means of enforcing or collecting the penalty or fine, will vary according to the powers granted to the court under its particular charter or body of ordinances.

When one ventures beyond the judge s role as city judge to that of a magistrate empowered to hear criminal violations, the

situation becomes even more involved. For those towns and cities incorporated under General Law Charters, section 6-217, Tennessee Code Annotated grants to the city judge or recorder concurrent criminal jurisdiction with justice of the peace within such judge's town or city. Likewise, section 6-3303, Tennessee Code Annotated, another general law charter, provides the city judge with the jurisdiction of a justice of the peace in criminal matters under the Modified City Manager Charter. On the other hand, in towns and cities incorporated pursuant to the City Manager Charter, such authority is not given in section 6-2119, which provides for city court jurisdiction under this general law charter. Those charters created by private acts of the legislature are for one individual city. Each charter of this type provides the jurisdiction for its municipal court. Judges who serve such cities will need to examine the private acts under which their cities or towns are incorporated to determine whether their courts have concurrent jurisdiction with justices of the peace in criminal matters.

Part one of this guide, Ordinance Violations, deals with violation of city ordinances and related matters and is included for the assistance of the court while sitting as a municipal court in deciding such cases.

Part two, State Violations, is largely statutory and deals with those procedural situations related to violation of state law

in which the city judge is sitting in the capacity of a state magistrate.

Part three, Miscellaneous Information, is composed of statutes and court decisions relating to situations which in most instances would be relevant to both city ordinance violations and violations of state law.

Part four, Forms, contains the various types of process which are commonly used in municipal courts and are included for the convenience of those who may desire to make use of them.

The writer wishes to express his deepest appreciation to Honorable Earl M. Bradley, judge of the Municipal Court of the City of Knoxville; the Honorable Andrew J. Evans, judge of the General Sessions Court, Knox County; and Miss Jacqueline Kersh, Mr. Don Ownby and Mr. Eugene Puett of the Municipal Technical Advisory Service for providing many valuable suggestions and evaluations that have been incorporated into this guide.

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PART ONE

ORDINANCE VIOLATIONS

ORDINANCES

An ordinance of the council of a
Definition municipality, although binding upon the community affected by it, is not a "law" in the legal sense. It is not prescribed by the supreme power of the state, from which alone a law can emanate, and it is not of general authority throughout the state.¹

An ordinance must be certain and
Requisites definite, so that the average man, after reading it with due care, will understand whether he will incur a penalty for his action or not.² To this end ordinances must have the following requisites:

(1) They must be consonant with the Constitution and statutes of the United States and of the state, and the general principles of common law.

(2) They must be authorized by the charter of the corporation or the general laws applying thereto and consistent with the object and purpose of its creation.

¹Rutherford v. Swink, 96 Tenn. 564, 35 S.W. 554.

²Town of Jonesboro v. Kincheloe, 148 Tenn. 688, 257 S.W. 418.

(3) They must be general and applicable alike to all persons and property affected by them.

(4) They must be certain in their application and operation.

(5) Their execution must not be left to the caprice of those whose duty it is to enforce them.

(6) They must be just.

(7) They should be adapted to the locality and the affairs which it is intended they shall control and affect.

(8) They must not be harsh and oppressive.

(9) They must not discriminate in favor of or against any class of persons or property.

(10) They must be general in their nature and impartial in their operation and effect.¹

Scope of penalty

The Constitution of the State of Tennessee provides that no fine shall be laid on any citizen of the state that exceeds fifty dollars (\$50), unless it shall

¹Jones v. Nashville, 109 Tenn. 550, 72 S.W. 985.

be assessed by a jury of his peers, who shall assess the fine at the time they find the fact, if they think the fine should be more than fifty dollars.¹ The State Court of Appeals ruled that this constitutional limitation on fines does not apply to penalties imposed for violation of city ordinances. The court said that where the penalty is not more nor less than \$100, the provisions of the constitution were not violated.

"While a fine is always a penalty a penalty is not always a fine. A fine is imposed in criminal action but a penalty is ordinarily recoverable in a civil action."²

This decision makes it possible by ordinance to assess a penalty in excess of fifty dollars (\$50) if the charter of the particular municipality so authorizes.

¹Art. 6, sec. 14, Constitution of the State of Tennessee.

²O'Dell v. City of Knoxville, 54 Tenn. App. 59, 388 S.W. 2d. 150.

THE TRIAL FOR ORDINANCE VIOLATION

Opening

Each judge may establish rules of conduct for his court, subject to the rights of any defendant appearing there. Accordingly, he may direct that his court be opened formally by a bailiff or other person designated by him. The opening may take several forms but in essence it simply is a statement that the session has begun and that the court will proceed with the business before it.¹ In numerous municipal courts it is customary for all persons present to stand when the judge enters the court room. The judge may prohibit smoking, limit all talking to those participating officially in the hearing, and require that all attorneys appear before him wearing coats, etc.

Oath or affirmation

Witnesses may all be sworn in a group at the beginning of the trial, or they may be sworn separately when they are called to testify. Some courts prefer to administer the oath to witnesses at the time they are called; the oath at that time is still fresh in their minds. Oath forms

¹Black's Law Dictionary, page 1241.

vary with the various courts. The form of oath used by some courts: "You do solemnly swear (affirm) upon the Holy Evangelist of Almighty God that the evidence you shall give in the case on trial, shall be the whole truth and nothing but the truth?"¹ Occasionally, a witness may decline to take an oath due to such witness's religious convictions or his lack of belief in any religion. Such persons may affirm that they will speak the truth.

Calling for
the rule

The judge on his own motion may separate the witnesses, or either of the parties to the action may request such separation. The "sequestration of witnesses," commonly referred to as "calling for the rule," is a requirement that all witnesses except the prosecutor and the defendant leave the court room and wait outside for their turn to testify. This rule has for its purpose:

- (1) Preventing prospective witnesses from consulting one another;
- (2) Rendering testimony inaudible to the prospective witness; and

¹Caruther's History of a Law Suit, section 329.

(3) Removing all possibility for consultation with a witness who has left the stand, since such witness may be recalled.¹

This rule of law is very ancient with roots fixed in the Old Testament. It is said that Daniel the prophet cross-examined two elders who had been placed under the rule by him and as a result exposed these elders as being guilty of perjury. In their testimony against the wife of Joacim, who was charged with adultery, one of the elders swore that the offense was committed under the mastick tree while the other testified that it was committed under the holm tree.²

Plea of the accused After the defendant is notified officially by the judge of the nature of the charge against him, he shall plead as to his guilt or innocence. Generally, this plea would simply be the oral denial of the charge against him.

¹Wigmore on Evidence, section 1840.

²Ibid., section 1838.

However, the accused shall state in brief, plain terms his defenses to each claim asserted and shall admit or deny the averments upon which the prosecutor relies.¹

Special plea
of accused

A special plea of defense is one in which the defendant pleads the facts on which he is relying, i.e., insanity, minority, etc., instead of the simple plea of not guilty.² It is also a pleading in excuse or justification; that is, it is one that goes beyond mere denial of the allegations made.³

Accused's right
as witness

The accused may testify and admit, explain or deny any allegation made against him by the prosecution. However, if he feels that his testimony would not improve his position before the court, or might even supply some material deficiency in the prosecution's case against him, he may decline to testify and such refusal may not be used against him.⁴

¹Rule 8.02, Rules of Civil Procedure.

²See: Defenses of the Accused page 12 of this guide.

³Balentine's Law Dictionary, page 1200.

⁴See: Article 1, section 9, Constitution of Tennessee, and section 40-1110, Tennessee Code Annotated.

Examination
of witnesses

The complainant in city court is usually the first person to testify.

He may be a private person or the arresting officer. His complaint, stated to the court under oath, is known as direct or original testimony. In those instances where the parties are represented by counsel, leading questions (questions which suggest the answer desired) may be prohibited except in these instances:

(1) Those questions asked for the purpose of introducing some material matter such as a document or for the purpose of introducing a witness;

(2) Questions the judge, in his sound discretion, may permit when a witness appears to be hostile to the party who called him.¹

Cross-examination

When direct testimony is completed, the adversary may examine the witness.

This is known as cross-examination and is a right which may not lawfully be denied. In some instances, it will not be used by the adversary if he feels that it might weaken his case. Leading questions are one of the principal devices employed in cross-examination and may be

¹Caruther's op. cit., section 336.

used without restriction. This examination extends to all matters related to the case and is not limited only to those matters brought out on direct examination.¹

Directed verdict At the conclusion of the testimony for the prosecution, if the judge is of the opinion that the prosecutor has failed to create a presumption of guilt and a reasonable mind, honestly seeking the truth, would form the same opinion, he may in his discretion dismiss the action without further testimony.²

Argument of counsel In cases in which the parties are represented by counsel, the attorneys on both sides of the action may, after all evidence is presented, make an argument to the court of conclusions drawn from such evidence which are favorable to their clients. Either of these parties may decline the privilege of argument if they so desire. The prosecutor has the right to present his argument first, followed by the defense. Neither attorney is a witness, and any representation of fact made by him in his argument must not be

¹Caruther's op. cit., and section 40-2529, Tennessee Code Annotated.

²Caruther's op. cit., section 361.

an assertion made to his own credit. It must be based solely upon those facts of which evidence has already been introduced or those situations of which no evidence need ever be introduced because of their notoriety, of which the court will take judicial notice.¹

Final decision
of the court

At the conclusion of all of the evidence, it is the duty of the trial judge to render a decision for or against the accused. In reaching his decision he must weigh all properly introduced evidence presented to the court.

(1) In determining against the accused in cases of ordinance violations, the court will need to find that a preponderance of evidence has been produced against the accused.²

(2) Those municipal courts having concurrent jurisdiction with justices of the peace in criminal violations shall be guided by these rules:

(a) When conducting a preliminary hearing, the court is required to find probable cause for believing

¹Wigmore, op. cit., section 1806.

²See "Rules of Evidence" in this guide, page 56.

that the accused is guilty as charged.¹

(b) When the court hears a case and decides it pursuant to the small offense act, the court is required to find the accused guilty as charged beyond a reasonable doubt.²

Results of final
decision

Upon a finding against the accused,
the following legal mechanics are authorized:

(1) In instances where city ordinances are violated, the court may assess any fine which conforms to the state constitution, and the provisions of the charter and ordinances of the city. If the accused is able but unwilling to pay the fine, the court is empowered to commit the accused to jail or workhouse to serve out the fine.³

¹ Ibid.

² Ibid.

³ See Tate v. Short, 28 L. Ed. 2d. 130, Sections 40-3207, 40-3208 and 40-3209, Tennessee Code Annotated.

(2) The accused may appeal a fine, assessed for violation of a city ordinance, to the circuit court¹ of the county in which that municipality is located by posting an appeal bond covering the fine assessed, and all costs, within ten (10) days thereafter, Sunday being excluded.²

DEFENSES OF THE ACCUSED

Plea of not guilty The plea usually used by the accused in city court is that of "guilty" or "not guilty." Not guilty is a general denial of each and every material allegation made against the pleader.³

Special pleas Special pleas are used in cases where they best protect the accused and are required for the presentation of special matters of defense which go beyond the mere denial of the allegations made. They may be said to be pleadings in excuse or justification.⁴ Among the many situations that may be defended by means of special pleas are:

¹Section 16-512, Tennessee Code Annotated.

²Ibid, Section 27-501.

³Balentine's Law Dictionary, page 518

⁴Ibid, page 1200.

(1) Limitation of prosecution, better known as the statute of limitations, establishes a limit on the time permitted for filing an action in court. When this time limit has passed and this plea is used as a defense, the charge against the accused must be dismissed. The time allowed for prosecuting a violation of law or ordinance varies according to the magnitude of the offense.¹ A violation of a city ordinance is a minor offense punishable by fine and is generally considered by the courts as being a misdemeanor.²

(2) Juveniles, or persons under the age of 18 years, may only be tried in juvenile court or other courts designated by law. However, if the offense is a traffic violation and the accused is 16 years of age or older, the judge of the juvenile court may waive jurisdiction and the case may be heard by the judge of the municipal court.³

(3) Insanity is a valid special defense in criminal cases, but in order to excuse the accused, the nature of the insanity must be such as to deprive the person of his reason,

¹Section 40-202, Tennessee Code Annotated.

²Simpson v. City of Knoxville, (Tenn. App. December 1, 1961, unreported.)

³Sections 37-206 and 37-245, Tennessee Code Annotated, also see page 17 of this guide.

May be heard
by city judge

In any case or class of cases the
judge of any juvenile court may waive
jurisdiction of traffic violators of 16 years of age or older,
and such cases shall be heard by the courts having juris-
diction of adult traffic violations, or the child may pay
the stipulated fine to a traffic bureau.¹

CITATION IN LIEU OF ARREST

Violations committed
in the presence
of officer

When any person violates a traffic
ordinance, law or regulation of any munic-
ipal or metropolitan government in the presence of any police
or peace officer, any member of the fire department or build-
ing department of such government who are designated special
police officers, it is not necessary for the officer to arrest
the offender. Instead the officer may issue a citation or
complaint, with a copy to the offender, showing the charge,
time and place for a court appearance.²

¹Section 37-245, Tennessee Code Annotated.

²Section 6-651, Tennessee Code Annotated.

Agreement to appear In order to avoid arrest and the issuance of the warrant, the offender is required to sign an agreement to appear at the time and place indicated, to waive the issuance and service of a warrant.¹

Duty to try without issuance of a warrant When the offender has signed the agreement and waiver, it is the duty of the court having jurisdiction to try the case upon the citation or complaint, without the issuance and/or service of a warrant upon the defendant. The citation or complaint shall, in all respects, be treated as though it were a warrant properly served upon the defendant.²

Violations committed not in the presence of officer When an officer makes a personal investigation at the scene of a traffic accident, or in the case of violations other than traffic accidents, such as building inspection, and the officer has reasonable and probable grounds to believe that the driver of such vehicle or the owner or occupant of property has violated any ordinance, law or regulation of any municipal or metropolitan government in this state, he may

¹Section 6-652, Tennessee Code Annotated.

²Ibid., section 6-653.

issue a citation instead of making an arrest or taking out a warrant.¹

Refusal to sign
agreement

If the offender refuses to sign the agreement to appear in court and waive issuance and service of a warrant, it is the duty of the officer, in whose presence the offense is committed, to immediately place the offender under arrest, take the person before the proper authority, procure a warrant, serve it on the offender and book him or her as in other cases of violations. The authority issuing the warrant shall take bail from the accused for appearance in court for trial, or commit the offender to jail.²

Failure of offender
to appear after sign-
ing agreement

Should the offender sign the agree-ment and waiver and fail to appear for trial at the time and place designated, the court having jurisdiction of the case immediately issues a warrant against the offender. An additional warrant for the offense of violating the agreement to appear should be issued provided the municipal or metropolitan government has made such failure an offense or adopted the state law creating such an offense.

¹Section 6-656, Tennessee Code Annotated.

²Ibid., section 6-654.

This warrant or warrants shall be served upon the offender and the procedure set out in the preceding paragraph (section 6-654, Tennessee Code Annotated) regarding the service of warrants, booking, and taking appearance bail or committing to jail shall be followed.¹

DEPOSIT OF DRIVER'S LICENSE IN LIEU OF BAIL

Deposit license for violation of traffic ordinance in lieu of bail Whenever any person lawfully possessed of a chauffeur's or operator's license theretofore issued to him by the department of safety is issued a citation or arrested and charged with a violation of any municipal ordinance regulating traffic, except driving under influence of intoxicant or narcotic drug or leaving scene of accident, in a municipality having a city court, the municipality may by ordinance allow said person to have the option of depositing his chauffeur's or operator's license issued under this chapter with the officer or court demanding bail in lieu of any other security required for his appearance in any court of the municipality in answer to any such charge before said court.²

¹Section 6-655, Tennessee Code Annotated.

²Ibid., section 59-730.

Receipt to be issued
for license deposited
in lieu of bail Whenever any person hereof deposits his chauffeur's or operator's license as provided, either the officer or the court demanding bail, as hereinabove described, shall issue said person a receipt for said license upon a form approved or provided by the department of safety, and thereafter said person shall be permitted to operate a motor vehicle upon the public highways of this state during the pendency of the case in which the license was deposited.¹

License deposited to
be forwarded to the
department of safety The clerk or judge of a court accepting the license shall thereafter forward to the department of safety, the license of a driver deposited in lieu of bail if the driver fails to appear in answer to the charged filed against him and which license shall not be released by the department of safety until the charge for which such license was so deposited has been disposed of by the court in which pending.²

Receipt to serve as
license when driving The licensee shall have his license in his immediate possession at all times when driving a motor vehicle and shall display it upon demand

¹Section 59-730, Tennessee Code Annotated.

²Ibid.

of any officer or agent of the department or any police officer of the state, county or municipality, except that where the licensee has previously deposited his license with the officer or court demanding bail, and has received a receipt from the officer or the court, the same to serve as a substitute for the license until the specified date for court appearance of licensee or the license is otherwise returned to the licensee by the officer or court accepting the same for deposit.¹

In addition to other provisions of state law

The provisions of this section are in addition to the provisions of sections 6-651 through 6-657, inclusive, of the Tennessee Code Annotated, (citations, etc.) and may be implemented as alternative procedure to the provisions of previously mentioned sections of the Tennessee Code Annotated and any other sections of this code in conflict herewith by passage of an ordinance by the governing body of said municipality.²

Implementing procedure

Any city or town in the state desiring to implement the provisions of this statute must (1) have a city court and certify this fact to the department of safety; (2) adopt an implementing ordinance and

¹Section 59-730, Tennessee Code Annotated.

²Ibid.

send a certified copy to the department of safety; and (3) use a receipt form approved by the department of safety.¹

Use of license as
bail is licensee's
option

This statute creates an option on the part of the licensee as to whether his chauffeur's or operator's license may be used in lieu of bail. Cities are not authorized under this act to seize the driver's license to be used in lieu of bail without his consent.

PROCESS TO BE SERVED BY REGISTERED MAIL, ETC.²

Limitations on use

Any municipal government with population of 50,000 or more, according to U.S. Census of Population of 1970 or any subsequent federal census of population, may authorize its city court by ordinance to serve process by registered or certified mail, addressee only, return receipt requested. This authority, however, is limited to actions of debt involving the nonpayment of any ticket or citation issued for any non-moving traffic violation.

¹General Order No. 612, dated 5 December 1972: Department of Safety, State of Tennessee. Also see sample implementing ordinance on page 177 and approved receipt forms on page 173 of this guide.

²Chapter No. 61, public acts of 1973.

PART TWO

STATE VIOLATIONS

CONCURRENT JURISDICTION WITH JUSTICE OF THE PEACE
IN CRIMINAL CASES

All city courts do not have authority to hear cases involving the violation of state law. There is no such general or blanket authority given by the legislature to municipal courts. Those courts vested with concurrent jurisdiction with the justice of the peace in criminal cases have acquired such jurisdiction from their charters. To determine the jurisdiction given his court by the legislature, a city judge must examine the charter of his city.

MAGISTRATE¹

Defined "The judges of the supreme, chancery, circuit, and criminal courts throughout the state, judges of the county courts and justices of the peace in their respective counties, and the presiding officer of any municipal or city court within the limit of their respective corporations are magistrates within the meaning of this title."

¹Section 40-114, Tennessee Code Annotated. (Jurisdiction and Venue are the subjects of title 40.)

PRELIMINARY EXAMINATIONS FOR STATE VIOLATIONS

Right to preliminary
hearing

In all criminal cases, prior to presentment and indictment, whether the charge be a misdemeanor or felony, the accused is entitled to a preliminary hearing at his request, whether the grand jury of the county is in session or not.¹

Notice of charge,
right to counsel

When the defendant is brought before a magistrate following arrest, either with or without a warrant, on a charge of having committed a public offense, the magistrate must immediately inform him of the offense with which he is charged, and of his right to counsel in every state of the proceedings.²

Procuring
counsel

If the defendant is not represented by counsel, the magistrate must allow the defendant a reasonable time to send for counsel and, if necessary, shall adjourn the examination for that purpose.³

¹Section 40-1131, Tennessee Code Annotated.

²Ibid., Section 40-1101.

³Ibid., Section 40-1102.

Time of
examination

The magistrate shall proceed to examine the case as soon as the defendant appears, or, if the defendant requires the aid of counsel, after waiting a reasonable time (see above).¹

Continuance

The magistrate may, however, for good cause, adjourn the examination from time to time, not exceeding three (3) days at any one (1) time without the consent of the defendant. In such cases, if the offense is not bailable or if the defendant does not give the bail required, he shall be committed to jail. If the offense is bailable, the defendant may make the bail, in such sum as the magistrate directs, for appearance for further examination.²

Change of judges

Any other magistrate of the county may replace the original magistrate at an adjourned examination and proceed with the case as the original magistrate could have done.³

Failure to appear
after adjournment

If the defendant does not appear before the magistrate at the time to which the examination is adjourned, he shall certify the

¹Section 40-1103, Tennessee Code Annotated.

²Ibid., section 40-1104.

³Ibid., section 40-1105.

default on the undertaking of bail and return the undertaking to the next circuit court or criminal court of his county, where the same proceedings shall be conducted as upon breach of an undertaking in that court.¹

Warrant of arrest On the defendant's failure to appear, the magistrate certifying the default, or any other magistrate, may issue another warrant of arrest. The same proceedings may be conducted against the defendant as on the original warrant.²

Examination of witnesses At the examination, the magistrate shall examine the prosecution witnesses, on oath in the presence of the defendant, and such witnesses as may be produced by the defendant.³

Right to remain silent When the examination of the witness on the part of the state is closed, the magistrate shall inform the defendant that it is his right to make a statement regarding the charge against him, or that he may waive this right. Waiver cannot be used against him in the examination before the magistrate, or

¹Section 40-1106, Tennessee Code Annotated.

²Ibid., section 40-1107.

³Ibid., section 40-1109.

at the trial.¹ Where a justice of the peace fails to advise the accused of his right to counsel, his right to make a statement regarding the charge against him, of his right to waive the making of such statement or fails to warn the accused that any statement he makes can be used against him, the statement and confession by the accused are inadmissible before the trial court. Also inadmissible is the fact that at the preliminary hearing the accused failed to deny incriminating testimony given against him.²

Interrogatories
put to the
defendant

The magistrate may, with the defendant's consent, ask only these questions:

- (1) What is your name and age? (2) Where were you born?
- (3) Where do you reside, and how long have you resided there?
- (4) Give any explanation you think proper of the circumstances appearing in the testimony against you, and state any facts which you think material to your defense.³

Statement reduced
to writing

If the defendant chooses to make a statement, the magistrate takes it in writing, without oath. The statement should be read back

¹Section 40-1110, Tennessee Code Annotated.

²Polk v. State, 170 Tenn. 270, 94 S.W. 2d. 394.

³Section 40-1111, Tennessee Code Annotated.

to and signed by the defendant; if he refuses to sign, his reasons for such refusal must be stated by the magistrate.¹

Defense
witnesses

After the waiver by the defendant of his right to make a statement, or after he has made a statement, his witnesses, if any, may be sworn and examined.²

Separation
of witnesses

At the examination the magistrate may make such orders in reference to keeping witnesses separate and apart, or excluding them during the examination of other witnesses or of the defendant, as he may think best for the attainment of justice, and he shall, on demand of either party, put all witnesses under the rule.³ The refusal of the rule upon demand of a party would be a denial of a right of that party and might be fatal to his cause which would entitle him to a new trial.⁴

¹Section 40-1112, Tennessee Code Annotated.

²Ibid., Section 40-1113.

³Ibid., Section 40-1114, (see page 5 of this guide)

⁴Nelson v. State 32 Tenn. 237.

Reduction of
evidence to writing

The evidence of the witnesses shall be reduced to writing by the magistrate, or under his direction, and signed by the witnesses.¹ This written evidence is only admissible at the trial to impeach the witness, when he has been questioned about his testimony before the magistrate.²

Discharge

When all evidence has been given, if it appears to the magistrate that no offense has been committed, or that there is no probable cause for the charge, the defendant shall be discharged.³

Commitment

If it appears that an offense has been committed, and there is probable cause to believe the defendant guilty, he shall be committed to jail by written order, unless the offense is bailable and the defendant gives sufficient bail as required for his appearance at court.⁴

¹TCA, Section 40-1115.

²Nelson op. cit.; Titus v. State 66 Tenn. 132.

³TCA, Section 40-1116.

⁴Ibid, Section 40-1117. (for form see page 163.)

Holding of
material witness

If the defendant is held to answer,
the magistrate shall take from each material
witness examined by him on the part of the state a written under-
taking, in the sum of two hundred and fifty (\$250.00), to
appear and testify, at the court at which the defendant is
required to answer, on the second day of the term.¹

Witness for
prosecution
may be bonded

If the magistrate has good cause to
believe a witness for the prosecution will
not appear to testify, he may require the witness to enter
into a similar undertaking in a larger amount with sufficient
security.²

Married women
and minors as
witnesses

Married women and minors who are
material witnesses for the prosecution
may also be required, in the discretion of the magistrate, to
obtain sureties who will undertake for their appearance to
testify, or the magistrate may issue subpoenas and have such
minors and married women immediately summoned to appear and
testify.³

¹Section 40-1122, Tennessee Code Annotated. (for bond form
see page 158.)

²Ibid, Section 40-1124.

³Ibid, Section 40-1125.

Witnesses failing
to make bond

Any witness required to enter into an undertaking, with or without security, shall, on failure or refusal, be committed to jail.¹ If a party is unable to give bond for his appearance, he must be discharged upon his own personal undertaking to appear, having committed no contempt warranting his imprisonment.²

Amount of bond

In such cases, the magistrate shall state in the commitment the amount of the undertaking and whether security is required; and the witness shall be discharged by the sheriff on entering into such an undertaking.³

Papers to be
delivered to court
for trial

All examinations and undertakings by parties or witnesses shall, together with the warrant and other papers, be returned by the magistrate to the court before which the defendant or witness is bound to appear, by the first day of said court.⁴

¹Section 40-1126, Tennessee Code Annotated.

²Cash v. Quenichett 52 Tenn. 737.

³TCA, Section 40-1127.

⁴Ibid., Section 40-1128.

Penalty for failure
to return to trial
court

Any magistrate or other officer failing to return any papers to the court, required above, is guilty of a misdemeanor in office. He may also be compelled by a rule of the court or, in case of disobedience, by attachment for contempt, to return the papers; and he is also liable to a penalty of twenty-five (\$25) dollars, one-half ($\frac{1}{2}$) to the informer and the other to the county.¹

Associate one or
more other magistrates

Any magistrate to whom information is made, or before whom a defendant is brought, may associate himself with one or more magistrates of the same grade. The powers and duties described above may be executed and performed by them.²

PROCEEDINGS BEFORE CITY JUDGE FOR STATE CRIMINAL OFFENSES

When an offense
prosecuted in city
& state courts

Whenever the commission of any act or the omission to act under certain circumstances constitutes both a violation of state law and a violation of municipal law, no person shall be prosecuted in both a state and a municipal court for the same offense, even

¹Section 40-1129, Tennessee Code Annotated.

²Ibid, Section 40-1130.

though different penalties are provided. A dismissal on the merits, acquittal or conviction of the offense in one court shall be a bar to prosecution in the other.¹

Authority and
power

Municipal courts having concurrent criminal jurisdiction with justices of the peace and the general sessions courts² are authorized and empowered:

- (1) To issue warrants for a prisoner escaped from jail.
- (2) To examine persons arrested for crime.
- (3) To bind defendants over to court if guilty.
- (4) To take bail in bailable offenses.³

Arraignment
before justice

A justice of the peace shall, before issuing subpoena for witnesses or entailing other costs, require the defendant to plead to the warrant.⁴ However, the magistrate has the duty, at the close of the prosecution's case, to advise the accused that he may make or waive a statement and that if he declines to testify, such

¹Section 40-305, Tennessee Code Annotated; Waller v. State of Florida, 90 S. Ct. Rep. 1184.

²TCA, Section 16-1104.

³Ibid., Section 40-401.

⁴Ibid., Section 40-404.

failure cannot be used against him.¹

Small offense act In all cases involving small offenses, where the maximum punishment prescribed does not exceed a fine of fifty dollars (\$50.00) and no imprisonment may be inflicted, magistrates are given trial jurisdiction even when the defendant pleads not guilty, provided appeals in such cases shall go directly to the criminal court or the court having jurisdiction.²

Plea of guilty, misdemeanors Any person brought before a justice of the peace for a misdemeanor may plead guilty. The justice shall hear the evidence and fine the offender, according to his offense, not less than two dollars (\$2.00) nor more than fifty dollars (\$50.00), plus all costs.³ A plea of guilty before a magistrate's court only admits that the defendant is guilty of a small offense punishable by a fine not exceeding fifty dollars (\$50.00). All that is submitted to the magistrate is a petty misdemeanor, within the aforementioned class, and the magistrate is within his juris-

¹Section 40-1110, Tennessee Code Annotated.

²Ibid., Section 40-408.

³Ibid., Section 40-407.

diction in assessing such a fine even though the offense itself may carry a greater punishment.¹

Justice of the peace, power limited If the offense merits a fine exceeding fifty dollars (\$50.00), or imprisonment and a fine of any amount, or imprisonment alone, or if the offense is punishable expressly by both fine and imprisonment, the justice shall not render judgment against the offender under the provisions of sections 40-407 (Jurisdiction of misdemeanors on plea of guilty), 40-408 (Jurisdiction of small offenses), 40-409 (Notice of trial to victim of personal violence), 40-410 (Payment of fine and costs), 40-411 (Security for fine and costs), 40-412 (Execution of fine and costs).²

Notice, victim of personal violence If the charge is of violence to the person of another, the person on whom the violence has been committed shall be notified of the time and place of the trial, so that he may attend and be heard as a witness. Should such person secrete himself so as to avoid service of notice, or fail to attend after due notice, the trial may be preceded with as in other cases.³

¹State ex rel. McMinn v. Murrell, 170 Tenn. 606, 98 S.W. 2d. 105.

²Section 40-416, Tennessee Code Annotated.

³Ibid., Section 40-409.

Payment of fine
and costs

On conviction, the offender shall immediately pay the fine and costs or give security to pay the same; or be imprisoned until the same are paid. The fine and cost, if paid before execution, shall be paid to the justice; if paid after execution, to the officer having the same.¹

Security for
fine and costs

One (1) or more persons may become security for the fine and costs by oral undertaking before the justice of the peace, or by written direction to the justice and an entry of judgment based thereon. For a justice knowingly to take insufficient security for the fine and costs is a misdemeanor in office.²

Execution for
fine and costs

If the offender gives such security, the justice shall forthwith issue execution against the offender and his surety for the fine and costs, returnable as other executions.³

¹Section 40-410, Tennessee Code Annotated.

²Ibid., Section 40-411.

³Ibid., Section 40-412.

Appeal and bail

The defendant obtaining writs of certiorari and supersedeas¹ may be discharged from custody upon giving bond and security for his appearance before the circuit or criminal court, as in other misdemeanor cases.²

Recorder, etc.make bond to remit
fines collected

Every justice of the peace, sheriff and constable, mayor, and recorder in the state shall execute bond, with good security, to the clerk of the county court to be approved by the judge or chairman of said court, payable to the state, renewable biennially, in the penalty of five hundred dollars (\$500), conditioned to pay to the trustee of the county every fine received or collected, or which might have been collected by him under the provisions of Chapter 2, title 40, Tennessee Code Annotated. Provided, however, every justice of the peace shall be relieved from the requirement of executing the aforesaid bond in those counties

¹Certiorari: A writ, issued by a superior court to a lower court exercising a judicial function, requiring the certification and delivery to such superior court of records and proceedings then pending, or the records and proceedings in some cause already terminated. (Bouvier's Law Dictionary, Vol. 1, page 443.)

Supersedeas: A writ containing a command to stay the proceedings at law. (Bouvier's Law Dictionary, Vol. 2, page 3186.)

²Section 40-415, Tennessee Code Annotated.

where, by private act of the general assembly, trial jurisdiction and authority of the justice of the peace in civil and criminal cases, suits and actions have been transferred to a COURT OF GENERAL SESSIONS or some other judicial tribunal.¹

¹Section 40-417, Tennessee Code Annotated.

PART THREE

MISCELLANEOUS

INFORMATION

DEPORTMENT OF THE JUDGE¹

The judge's deportment, while not cold and indifferent, should not invite undue familiarity. There are sometimes those who take undue advantage of a judge's courtesy, endeavor either to make him believe that their good will is necessary to his success, or to make others believe they own the court, and that they can be more influential than facts, law and sound argument from others not so favored. That such things take place should be conclusive proof to the judge that his familiarity is bringing him to contempt and should remind him that "parasites seldom cling to what is pure and sound."

Nevertheless, there should be no "iciness" in the atmosphere surrounding the judge, but an attitude of respectful courtesy, "assuring to the timid and not too encouraging to the presumptuous." Every lawyer, litigant, or official having official business with the judge should receive the full measure of considerate attention necessary for the proper discharge of the particular duty he is called on to perform, and should never be made to feel that he is trespassing upon the judge's time, or consuming too much of the judge's attention. The judge is a public official; his time is not his own, but belongs to

¹Gibson's Suits in Chancery, section 1220.

his duties and to those who have official business with him. When a judge forgets this fact, he forgets that he is a public servant and is in danger of becoming a public master.

THE MUNICIPAL COURT

State constitution
authorizes city
courts

Pursuant to the constitution of this state, judicial power is vested in one Supreme Court and in such circuit, chancery and other inferior courts as the legislature shall from time to time ordain and establish. The legislature may also vest such jurisdiction in corporation courts as may be deemed necessary.¹ In conformity with the constitution, the legislature² has provided that the judicial power of the state shall be vested in justices of the peace and recorders of certain towns and cities.³

Only some city courts
have jurisdiction of
justice of peace

The legislature has extended greater jurisdiction to some municipal courts than it has to others. One group of such courts has concurrent jurisdiction in criminal actions with the justice of the peace within the boundaries of that particular town or city.⁴

¹Article VI, section 1, Constitution of Tennessee.

²Section 16-101, Tennessee Code Annotated.

³Deming v. Nichols, 135 Tenn. 295, 186 S.W. 113.

⁴Moore v. State, 159 Tenn. 468.

Another group of city courts may only try violations of city ordinances. Courts with concurrent jurisdiction with the justice of the peace are granted this extra authority in the charters of their respective towns or cities. Therefore, to determine the exact jurisdiction of a city court, it is necessary to examine the charter of the town or city in question.

THE CITY JUDGE IN HOME RULE CITIES¹

Governing body may establish city court

In all home-rule municipalities the governing bodies are authorized to establish city courts to try violations of municipal ordinances and in those municipalities who now have city courts the governing bodies may increase the number of divisions of same.

Judge to be elected

The judges of the city court hereinafter established by the governing body of home-rule municipalities shall be appointed on the nomination of the mayor or chief executive officer, concurred in by the city council or other legislative body, but said judges so appointed shall run for election in the next general election after April 19, 1972.

Judge may conduct preliminary hearings

The judges so appointed or elected shall have full power and authority to

¹Public Acts, 1972, chapter 778.

try and dispose of violations of municipal ordinances and have all other powers touching upon the arrest and preliminary trial, discharging, binding over, of all persons charged with offenses against the state committed in the city or municipality.

Governing body may
increase the
divisions

In those home-rule cities which have city courts and the legislative body increases the number of divisions thereof, the legislative body shall authorize the same power as other divisions and the newly created divisions shall be under the same direction and control as presently provided in the municipal charter.

Court cost fixed
by governing body

Reasonable costs shall be set by ordinance of the governing body of any home-rule municipality regardless of any present limit, but in no event shall said costs exceed the costs assessed in the general sessions courts in the state of Tennessee.

SPECIAL CITY JUDGE¹

Appointment

"Whenever the city judge finds it necessary to be absent from holding court, he may designate in writing, to be filed with the clerk of the city court, a

¹Section 6-3302, Tennessee Code Annotated.

name of a special judge to hold court in his place and stead. The special judge shall be a person who has the qualifications of city judge and he shall take the same oath and have the same authority as the regular city judge to hold court for the occasion."

MAYOR SERVING AS CITY JUDGE¹

Several municipal governments in Tennessee have created by their charters the dual position of mayor-city judge. Such circumstances create a merger of the executive and the judicial branches of the city government. The merger of these functions has raised a constitutional question in another state which involved due process of law.

Held violation of Fourteenth Amendment

The United States Supreme Court on November 14, 1972, held that where the mayor also sits as city judge and a major part of the town's income is derived from fines, forfeitures, costs and fees there is a plain possibility that the mayor's financial responsibilities may make him partisan in any case before him and would thereby be a violation of the Fourteenth Amendment to the Constitution of the United States.

¹Ward v. Village of Monroeville, Ohio, 93 S. Ct. 80.

COURT MAY BE CHANGED BY ORDINANCE¹

City court created Any city or town having a mayor's court or a municipal court presided over by the mayor and having no other provision for a municipal judge, the governing body of the municipality may by ordinance provide for the office of city judge.

Judicial powers of city judge Any ordinance creating the office of municipal judge shall contain the following provisions:

(1) The municipal judge shall be vested with the judicial powers and functions of the mayor and shall be subject to the provisions of law and the municipality's charter governing such court.

(2) Provide the qualifications of the municipal judge.

(3) The judge is to be appointed by the governing body.

(4) The time when the term of office shall begin and that it shall continue for two (2) years and until the judge's successor is appointed and qualified.

(5) The vacancies in the office shall be filled for the unexpired term by the governing body.

(6) The taking of the oath of office and bonding of the

¹Public Acts, 1973, chapter 330.

municipal judge before assuming the duties of office..

(7) The cost of making bond to be paid by the municipality.

(8) The salary of the judge to be fixed by the governing body before appointment not to be altered during the term for which he was appointed.

(9) Designation of a person to serve as judge during the absence or disability of the municipal judge.

POWERS OF COURTS GENERALLY

Every court shall have the following powers:

(1) To enforce order in its immediate presence, or as near thereto as is necessary to prevent interruption, disturbance, or hinderance to its proceedings;

(2) To enforce order before a person or body acting under its authority;

(3) To compel obedience to its judgments, orders, and process, and to the order of a judge out of court, in an action or proceeding therein;

(4) To control, in furtherance of justice, the conduct of its officers (lawyers) and all other persons connected with a judicial proceeding before it, in every matter appertaining thereto;

(5) To administer oaths whenever it may be necessary in the exercise of its powers and duties; and

(6) To control its process and orders.¹

CIVIL LIABILITY OF JUSTICES OF THE PEACE

No Tennessee case has been found relating to whether or not a municipal judge may be held civilly liable for a faulty decision rendered by him. The Supreme Court has held that a justice of the peace is not legally liable for mere errors of judgment in any case where he has jurisdiction, and without malice honestly pronounces what he believes to be the judgment of the law.²

CRIMINAL LIABILITY OF MUNICIPAL JUDGES

Duty to enforce law It shall be the duty of recorders and/or municipal judges of each municipal corporation to faithfully maintain and enforce, within the corporate limits of their respective municipalities, the statute laws relating to lewdness, drunkenness, gaming, and the sale and manufacturing of intoxicating liquors, by having arrested and arraigned for trial all persons violating such laws with their knowledge, and by taking such other proceedings against such violators as may be authorized and provided for by ordinance of such municipalities.³

¹Section 16-102, Tennessee Code Annotated.

²Hoggatt v. Rigley, 25 Tenn. 237.

³Ibid., 6-614.

Penalty for failure
to obey

The willful failure or neglect of any of said officers to perform the duties prescribed by the preceding paragraph (section 6-614, Tennessee Code Annotated) shall result in said officers being fined not more than fifty dollars (\$50.00), imprisoned not more than sixty (60) days, and dismissed from office.¹

MISBEHAVIOR IN COURT²

Commission of offense
in open court, bond

Any person who, in the presence of a court or magistrate, commits or threatens to commit an offense against the person or property of another, or contends with another with angry words, may be ordered, without process, to enter into an undertaking to keep the peace for a term not exceeding twelve (12) months, and in case of refusal be committed as in other cases.

Contempt punishment

A city judge, under state law, may assess a fine for contempt of court;³ however, the fine may not exceed ten dollars (\$10.00).⁴ Conduct considered contemptuous in this connection is limited to (a) willful misbehavior

¹Section 6-615, Tennessee Code Annotated.

²Ibid., Section 38-317.

³May v. Krichbaum, 152 Tenn. 416, 278 S.W. 54.

⁴Section 23-903, Tennessee Code Annotated.

in, or near enough to, the court to disturb its proceedings;
 (b) willful misbehavior of any of its officers; (c) willful
 disobedience or resistance to any process, order, rule, decree
 or command of the court by any officer, party, or other persons;
 (d) and the abuse of, or unlawful interference with, the pro-
 cess or proceedings of the court.¹

WITNESSES GENERALLY

Competency of witnesses generally

Every person of sufficient capacity
 to understand the obligation of an oath
 is competent to be a witness.² As to whether a witness under-
 stands the obligation of an oath is a matter of the trial
 judge to determine.³

Husband and wife as witnesses

Formerly neither husband nor wife
 was a competent witness for or against
 the other, in civil or criminal cases, either during the
 marriage or afterwards.⁴ Presently, by statute, either hus-
 band or wife is competent to testify in criminal or civil

¹ Section 23-902, Tennessee Code Annotated.

² Ibid., Section 24-101.

³ Aterburn v. State, 216 Tenn. 240, 391, S.W. 2d. 643.

⁴ Brewer v. Ferguson, 30 Tenn. 565; Insurance Company v. Shoemaker, 95 Tenn. 71.

cases for or against one another.¹ In all civil cases (including violations for city ordinances), no person shall be incompetent to testify because he is a party to, or interested in, the issue tried, or because of disabilities of marriage, but all persons, including husband and wife, shall be competent witnesses though neither husband nor wife shall testify as to any matter that occurred between them by virtue of or in consequence of the marital relationship, save action for divorce brought by either spouse, when the parties or either of them shall be at liberty to testify to all matters occurring between them by virtue of the marital relationship.²

Unbeliever
as witness

Unbelievers or persons who do not believe in God and a future state of rewards and punishments may be witnesses in any cause pending in any of the courts. Said unbelievers may solemnly affirm instead of taking an oath, and false testimony by said persons shall be punished as perjury as provided by law under such circumstances. Such unbelief in God and a future state of rewards and punishments shall only go to the credibility of the witness.³

¹Section 40-2404, Tennessee Code Annotated.

²Ibid, Section 24-103

³Ibid, Section 24-102.

Attorney as witness No attorney, solicitor or counselor shall be permitted, in giving testimony against a client or a person who consulted him professionally, or to disclose any communication made to him as such by such person during the pendency of the suit, before, or afterwards to his injury.¹

EXPERT WITNESSES

Expert witness defined An expert witness is a person selected by the court or the parties in a cause, because of his knowledge or skill, to examine, estimate, and/or ascertain some thing and make a report of his opinion.²

Qualification An expert witness must prove to the court that he possesses knowledge, skill or experience needed to inform the court in the particular case under consideration and on the particular question for which he was called.³ The qualification of a witness as an expert is left to the discretion of the court, and will not be overruled on appeal unless there was an abuse of discretion.⁴ Also, the court

¹Section 29-305, Tennessee Code Annotated.

²Bouvier, op. cit., Vol. 1, page 1158.

³Casone v. State, 193 Tenn. 303, 246 S.W. 2d. 22.

⁴McElory v. State, 146 Tenn. 442, 242 S.W. 883; Fortune v. State, 197 Tenn. 691, 277 S.W. 2d. 381.

may exercise its discretion as to the number of expert witnesses each side may introduce.¹

Basis for admission In cases involving a highly specialized art about which a layman has no knowledge, the court must depend upon expert testimony.² Necessity alone is the ground for such testimony; the moment this necessity ceases, the need for opinion evidence ceases.³ Its scope should be limited to the field in which the witness is an expert and in no case should his opinion include material facts which the judge or jury is capable of deciding.⁴

Examination of
expert witness

Examination of an expert witness is accomplished by a series of hypothetical questions, which give a recital of facts assumed to have been proved in the case and which require an opinion of the witness.⁵ Such questions must fairly state the facts that are before the court.⁶ If one fact supposed to be true is included in the hypothetical

¹Powers v. McKinzie, 90 Tenn. 167, 16 S.W. 559.

²Vaughan v. Oliver, 3 Tenn. App. 559.

³Memphis Street Rwy. v. Hicks, 1 Tenn. Civ. App. 513.

⁴Moon v. State, 146 Tenn. 360, 242 S.W. 39.

⁵Bouvier, op. cit., Vol. 1, page 1481.

⁶Tenn. Cent. Rwy. Co. v. Gleaves, 2 Tenn. App. 549.

questions and is untrue, that is, not supported by evidence, then the opinion of the expert is of no value.¹ From the facts related to him, he may state a conclusion or give an opinion on a subject which is particularly a matter of superior knowledge on his part, because the lay mind is not so competent to form such opinion.² Moreover, he may testify only that a certain cause could or might produce the condition; to do otherwise would be to supplant the court.³

Cross-examination An expert witness may be cross-examined by reading to him, or having him read, extracts from standard authorities upon the subject matter, and by asking whether he agrees or disagrees with such authorities. In addition, his opinion may be compared with that of such authorities.⁴

Opinions of experts are not conclusive, at least where there is other evidence from which a contrary conclusion may be legitimately drawn. On the other hand, they are not necessarily

¹Fisher v. Travelers Ins. Co., 124 Tenn. 450, 138 S.W. 316.

²McCrary v. State, 133 Tenn. 358, 181 S.W. 165.

³Sanders v. Blue Ridge Glass Corp., 161 Tenn. 535, 33 S.W. 2d. 84.

⁴Byers v. Nashville etc. Rwy. Co., 94 Tenn. 345, 29 S.W. 128.

entitled to less weight than other evidence.¹ Such evidence must be received with caution; further than this the courts of this state have not gone.²

NON-EXPERT OPINIONS

Outside the area of expert testimony there are many cases where, from their very nature, non-expert witnesses are permitted to express an opinion. The admissibility of such testimony rests on the ground of necessity. The facts from which the conclusion of the witness is drawn are such that it is impossible to present them in a tangible or intelligible form to the court. Within this class may be found identity; resemblance; apparent condition of the mind or body; intoxication; sickness; duration; distance; dimension; velocity;³ handwriting; quality; value; weight; measure; time; heat; cold; health; temper; anger; fear; excitement; veracity and general character;⁴ disposition; and peculiarities of habit, form and features.⁵

¹Elliott, op. cit., section 1047.

²Fisher v. Travelers Ins. Co., op. cit.

³Cumberland v. Dooley, 110 Tenn. 104, 72 S.W. 475.

⁴Hardy v. Merrill, 56 N.H. 227, section 1918, Wigmore on Evidence.

⁵Norton v. Moore, 40 Tenn. 480.

RULES OF EVIDENCE

Importance of rules

Rules of evidence are an important part of every law suit, whether it is criminal or civil or whether the trial is before a jury or not. The influence of the rules is more apparent in cases tried by jury because attorneys representing the adversaries are more careful to raise objections to inadmissible testimony. This is done to prevent such testimony from reaching the jury and having a possible adverse effect for the client of the objector.

Rules in non-jury hearings

Rules of evidence also are important to a judge trying a case without a jury. The judge is more familiar with the rules than members of the jury and for that reason attorneys often do not raise objections to all inadmissible testimony. In conducting the hearing without a jury, the trial judge's lot is made lighter when the attorneys are more particular as to the type of testimony presented to the court. Objections to inadmissible evidence directs the attention of the judge to unacceptable testimony that he might otherwise consider in rendering his opinion.

An attorney making objections to any question directed to a witness should state to the court the rule of evidence upon which his objection is based. If he does not, the court

should ask the attorney what rule of evidence he is relying upon in making his objection.

Testimony to be material

A lawsuit must have an issue to be settled. One party to the suit alleges a fact while the other party denies its truth. All questions asked and all answers given should tend to prove, deny or explain the issue or issues. In other words, the evidence must be material to the question in dispute.¹

Weight of evidence

The amount of evidence for conviction is an all-important question for the court. The weight of evidence does not always turn upon the number of witnesses testifying for or against the accused.² Some testimony should be given more consideration or weight than other testimony. For example, ordinarily the testimony of a disinterested witness should be given greater weight than that of one who has an interest. However, the testimony of a disinterested person may be overshadowed by some factor such as a prior conviction for perjury or contradictory statements, etc., which will lessen its weight.

¹Knoxville Traction Co. v. Brown, 115 Tenn. 323, 89 S.W. 319.

²Christian v. State, 184 Tenn. 163, 197 S.W. 2d 797.

Ordinance violation
civil case

The Supreme Court of Tennessee has held that a hearing for the violation of a city ordinance is in the nature of a civil case.¹ Guilt is proved in a civil case by a preponderance of evidence,² not beyond a reasonable doubt as in criminal cases.³ A preponderance of evidence has been described as being the greater weight of the evidence which is more credible,⁴ no matter how slight the weight may be.⁵

Proof in preliminary
hearing

For this reason, city judges who have jurisdiction concurrent with justices of the peace and general sessions judges in criminal cases are governed by two separate rules of evidence in the conduct of hearings. If the judge is trying a preliminary hearing, he will need to find that there is "probable cause" for believing that the accused is guilty⁶ in order to justify binding the accused over to the grand jury. Probable cause

¹Odell v. City of Knoxville, 214 Tenn. 237.

²Phillips v. Newport, 28 Tenn. App. 187.

³Roe v. State, 210 Tenn. 282, 385 S.W. 2d. 308.

⁴Button v. Metcalf, 80 Wis. 193, 49 N.W. 809.

⁵Hill v. Goodyear, 72 Tenn. 233, Insurance Co. v. Crunk, 91 Tenn. 376.

⁶Section 40-1117, Tennessee Code Annotated.

may be defined as a reasonable grounds for suspicion, supported by circumstances sufficiently strong in themselves to warrant belief by a cautious man that the person accused is guilty of the offense with which he is charged.¹

Proof under small
offense law

When the city judge, sitting in the capacity of a justice of the peace, hears a case under the "small offense law,"² which provides him with authority to hear the cause even when the accused pleads not guilty, provided that the penalty does not exceed fifty dollars (\$50.) and carries no prison term, he is trying a criminal offense.³ To find the accused guilty of a criminal offense, it is necessary to do so beyond a reasonable doubt. This is a greater degree of proof than is required in a civil case,⁴ or for conviction for violating a city ordinance.

Generally hearsay
is excluded

The general rule provides that hearsay testimony is not admissible in court because it does not derive its value solely from credit to be given the witness himself but rests also, in part, on the veracity and

¹Lea v. State, 181 v. 378, 181 S.W. 2d. 351.

²Section 40-408, Tennessee Code Annotated.

³Ibid, Section 39-103.

⁴Farmer v. State, 208 Tenn. 75.

competence of some other person.¹ It has not borne the test of cross examination and is given without the sanction of oath.²

Exceptions to the hearsay rule

The courts recognize certain exceptions to the rule that hearsay evidence is not admissible and at times permit its introduction, as in the following instances:

(1) A dying declaration, though clearly hearsay, has long been admitted as an exception to the hearsay rule.³ The reason for its admission is necessity to prevent the guilty from escaping.⁴ It must be made "in the extremis, when every hope of this world is gone, when every incentive to falsehood is silenced and the mind is induced to the most powerful consideration to speak the truth."⁵ Necessity is the sole reason for its use, and it must appear that the deceased was the only witness.⁶ It can only show the immediate circumstances of the homicide and the identity of the party committing the crime,

¹Pearce v. Kyzer, 84 Tenn. 521.

²Tom Love v. Maryland Cas. Co., 166 Tenn. 275.

³Jones on Evidence, Section 9:2.

⁴Still v. State, 125 Tenn. 86, 140 S.W. 298.

⁵Hudson v. State, 43 Tenn. 355.

⁶Stewart v. State, 70 Tenn. 598; Potecte v. State, 68 Tenn. 214.

and is not admissible to prove past occurrences, previous threats or motives for the crime.¹

If a dying declaration is reduced to writing, is signed by the declarant,² and is still in existence, it must be introduced instead of oral evidence.³ It may be impeached as other evidence when the declarant has made contradictory statements which were made not in the extremis as well as those that have been made in the extremis.⁴ The burden is upon the party offering the declaration, as a condition precedent to its admission, to show affirmatively that the declarant was fully conscious of his impending death and of such sane mind as to make a declaration understandingly.⁵ A dying declaration need not be given under oath because such a declaration has the sanction of an oath; however, the fact that it is given under oath does not render it inadmissible evidence.⁶

¹Still v. State, 125 Tenn. 86, 140 S.W. 298.

²King v. State, 91 Tenn. 616.

³Turner v. State, 89 Tenn. 547, 15 S.W. 838.

⁴Morelock v. State, 90 Tenn. 528, 18 S.W. 258.

⁵Jolly v. State, 130 Tenn. 286.

⁶Turner v. State, op. cit.

(2) Reputation is always based on hearsay.¹ It is the general reputation of the person in question among his neighbors. It is not founded on particular facts nor an estimate founded on personal knowledge of many facts.²

(3) Hospital records may be introduced in evidence by the custodian of such records when it appears that the person who made such records is not available or accessible to testify.³

(4) Entries "into business records made in the regular course of business" are admissible as an exception to the hearsay rule of evidence only if the enterer is not available to testify.⁴

(5) Bloodhound evidence is admissible, but a proper foundation must be laid for its introduction. Qualities and training of a particular dog whose performance is relied upon must first be shown. All dogs do not possess ability to follow a trail in the same degree. However, when a dog of good blood and proven individual merit is laid upon a track appearing to have been made by the suspect, its conduct in following the

¹Canepari v. State, 169 Tenn. 472.

²Ford v. Ford, 26 Tenn. 91.

³Hill v. National Life and Accident Ins. Co., 11 Tenn. App. 33; and Bolden v. State, 140 Tenn. 118.

⁴Bolden v. State, op. cit.

trail which fairly points out the accused as its maker is admissible. Bloodhound evidence is not alone sufficient to convict, but requires corroboration.¹

(6) A judicial record of a sister state, or of any of the federal courts of the United States, may be proved by a copy thereof, attested by the clerk under his seal of office, if he have one, together with a certificate of a judge, chief justice or presiding magistrate that the attestation is in due form of law.²

(7) A judicial record of this state is proved by the production of the original, or by a copy thereof, certified by the clerk or the person having legal custody thereof and authenticated by his seal of office if he have one.³

(8) Pedigree may be proved by hearsay evidence. The term embraces not only descent and relationship, but also the facts of birth, marriage and death and the times when these events happened.⁴ An entry of a deceased parent, or other relative, made in a Bible, family missal or other book, or in any document, stating the fact and date of birth, marriage or death

¹Copley v. State, 153 Tenn. 189.

²Section 24-602, Tennessee Code Annotated.

³Ibid., Section 24-601.

⁴Swink v. French, 79 Tenn. 78, 47 Am. Rep. 277.

of a relative is regarded as a declaration of such parent or relative in a matter of pedigree.¹ Inscriptions on tombstones and on family portraits and charts, engravings in rings, and hearsay evidence generally are admissible in matters relating to age and pedigree.²

Best evidence rule The best evidence rule requires that the party offering evidence shall produce the best evidence in his power.³ Thus where a contract has been reduced to writing, its contents cannot be proved by parole (oral) evidence if the writing is available.⁴

Extra-judicial confession An extra-judicial confession is one made by a party elsewhere than before a magistrate or in open court⁵ and is admissible in evidence when it is made voluntarily.⁶ Some evidence of guilt should be introduced prior to the introduction of a confession because, standing alone, it is not sufficient to establish the essential elements

¹Vaughn v. Phebe, 8 Tenn. 5; Pearce v. Kyzer, 84 Tenn. 522.

²Murray v. Supreme Hive, 112 Tenn. 664, 80 S.W. 827.

³Dunlap v. Sawvel, 142 Tenn. 696.

⁴Creed v. White, 30 Tenn. 549.

⁵Bouvier, op. cit., Vol. 1, page 588.

⁶Ann v. State, 30 Tenn. 159, Rounds v. State, 171 Tenn. 517.

of the crime.¹ Involuntary confessions are excluded because of the great probability of their being inaccurate.² It is not necessary that physical force be used to obtain an involuntary confession; if it is induced by hope or fear only, it will be rendered inadmissible.³ However, the fact that the accused is fearful of the consequences of the crime does not destroy validity.⁴ What will or will not be sufficient "to deprive the mind of its free volition" must depend upon the circumstance of each case, and the mental capacity of the accused at the time.⁵ Great weight and credit are due a confession when it proceeds from a sense of guilt and not from the influence of hope and fear in any degree.⁶

Inadmissible
confession leads
to other evidence

A prior confession, where the mind of the accused has been under restraints due to hope or fear, is inadmissible but may become valid when it clearly appears that the mind had become totally free of such

¹Barksdale v. State, 200 Tenn. 322, 292 S.W. 2d. 193.

²Rice v. State, 50 Tenn. 215.

³Taylor v. State, 191 Tenn. 670.

⁴Honeycutt v. State, 67 Tenn. 371.

⁵McGlothlin v. State, 42 Tenn. 223.

⁶Deathridge v. State, 33 Tenn. 76.

restraints at the time the subsequent confession was made.¹

Where important facts are discovered as a consequence of a confession improperly taken, portions of the confession which strictly relate to the facts discovered by it may be given in evidence.²

Silent confession Generally, if an accusation is made in the presence and hearing of the accused and he remains silent, though having an opportunity to speak, then the fact of the making of the statement and the silence of the accused person are admissible evidence.³

Confession while intoxicated The fact that the accused was in a drunken condition when he made a confession does not affect its admissibility but goes only to the credibility of the evidence.⁴

Copies of confession furnished accused on request Whenever a written or oral confession or admission against interest shall have been made before any law enforcement officer or agency in this state by any person charged with any crime, a copy of such confession, or admission against interest, if written, together with a list

¹Deathridge v. State, 33 Tenn. 76.

²Ibid.

³Lovvorn v. State, 192 Tenn. 336.

⁴Harper v. State, 206 Tenn. 509.

of the names and addresses of all persons present at the time such confession or admission against interest was made, shall be given to the defendant or his counsel on demand. If such confession or admission against interest was not reduced to writing, then a list of the names and addresses of all persons present at the time the confession or admission against interest was made shall be furnished.

No confession or admission against interest shall be admitted as evidence in any case unless a copy of the confession or admission against interest and/or list of names and addresses of persons present at the time the confession was made is furnished as required by this section.¹

Driver's implied
consent to test
for alcohol

Any person who drives any motor vehicle in Tennessee shall be deemed to have given his or her consent to a test for the purpose of determining the alcoholic or drug content of his or her blood; provided that such test is administered at the direction of a law enforcement officer having reasonable grounds to believe such person to have been driving while under the influence of an intoxicant or drug, as defined in section 59-1044, Tennessee Code Annotated (Operator's implied consent to chemical tests)

¹Section 40-2441, Tennessee Code Annotated.

Any physician, registered nurse, clinical laboratory technologist, or clinical laboratory technician who acting at the written request of a law enforcement officer withdraws blood from a person for the purpose of making such test shall not incur any civil or criminal liability as a result of the withdrawing of said blood, except for any damages that may result from the negligence of the person so withdrawing. Neither shall the hospital or other employer of any such physician, registered nurse, clinical laboratory technician incur, except for negligence, any civil or criminal liability as a result of the act of withdrawing blood from any person submitting thereto.

If such person having been placed under arrest and thereafter having been requested by a law enforcement officer to submit to such test, refuses to submit, the test shall not be given; but the commissioner of the department of safety shall suspend his or her license.

Any person who is unconscious as a result of an accident or is unconscious at the time of arrest or apprehension or otherwise in a condition rendering him incapable of refusal, shall be subjected to the test as provided for by sections 59-1044--59-1051, but the results thereof shall not be used in evidence against him or her in any court or before any regulatory body without the consent of the person so tested.

Refusal of release of the evidence so obtained will result in the suspension of his or her driver's license, thus such refusal of consent shall give such person the same rights of hearing and determinations as provided for conscious and capable persons in this section.

Provided, however, that after suspension of a license, the commissioner shall grant such person an opportunity to be heard within twenty (20) days after receipt of the written request of such person for a hearing. Provided, further, that the commissioner must make an official determination within fifteen (15) days after a hearing is concluded and the evidence shall be preserved and contained in the record with a sworn report of the law enforcement officer that he had reasonable ground to believe such person to have been in violation of section 59-1031, which report shall state the grounds for such belief, and that such person had refused to submit to such test when requested.

A person whose license has been suspended by the department of safety under this section may apply to any general sessions, circuit court, criminal court judge, or any chancellor having jurisdiction in the county of his residence for a restricted license. The judge of the court wherein the application is made may order the issuance of a restricted license allowing

the person to operate a motor vehicle for the purpose of going to and from and working at his regular place of employment. Such order shall state with all practicable specificity the necessary time and places of permissible operation of a motor vehicle. The person may obtain a certified copy of the order and within ten (10) days after it is issued present it, along with an application fee of ten dollars (\$10.00), to the department of safety who shall forthwith issue a restricted license embodying the limitations imposed in the order. After proper application and until such time as the restricted license is issued a certified copy of the order may serve in lieu of a motor vehicle operator's license. Any restricted license issued under the provisions of this section shall be subject to renewal in the same manner as other motor vehicle operator's license.¹

Presumptions For the purpose of Chapter 10 (Accidents, Arrests, Crimes and Penalties), Tennessee Code Annotated, evidence that there was, at the time alleged, five-hundredths of one per cent (.05%), or less, by weight of alcohol in the defendant's blood shall create no presumption.

Evidence that there was, at the time alleged, ten hundredths of one per cent (.10%), or more, of alcohol in the defendant's blood shall create a presumption that the defendant

¹Section 59-1045, Tennessee Code Annotated.

was under the influence of such intoxicant, and that his or her ability to drive was impaired thereby, sufficiently to constitute a violation of the section prohibiting driving while intoxicated or drugged.¹

Res gestae The expression "res gestae" is derived from the Latin and is interpreted as meaning transaction, thing done, the subject matter, and may be more specifically defined as meaning all declarations or exclamations uttered by the parties to the transaction and which are contemporaneous with and accompanying it and are calculated to throw light upon the motives and intentions of the parties to the transaction.² Such declarations, to be admissible, must also tend to characterize the act in question.³

¹Section 59-1047, Tennessee Code Annotated.

²Bouvier, op. cit., Vol. 2, page 2905.

³Taylor v. State, 79 Tenn. 708.

PERJURY AND SUBORDINATION OF PERJURYPenalty

Whoever, having taken a lawful oath of affirmation, in any matter not otherwise specifically provided for in the Tennessee Code Annotated, in which, by law, an oath or affirmation is required shall upon such oath or affirmation swear or affirm willfully, corruptly and falsely touching a matter material to the point in question, shall be guilty of perjury, and on conviction shall be imprisoned in the penitentiary for not less than one (1) year nor more than five (5) years. This section shall cover all cases of willfully corrupt and false swearing where an oath or affirmation is required by law and which are not otherwise specifically provided for in the Tennessee Code Annotated; and the punishment fixed herein shall apply to all offenses declared by this code to be perjury and/or punishable as perjury, where punishment is not otherwise specifically provided.¹ A judge may administer an oath, or he may direct anyone in his presence in open court to administer it and the oath will be valid.² However, to sustain the charge of perjury, it must be shown that the false testimony was material to the issue before the court.³

¹Section 39-3301, Tennessee Code Annotated.

²Stephens v. State, 31 Tenn. 157; Ayres v. State, 45 Tenn. 26.

³State v. Bowlus, 50 Tenn. 29; State v. Argo, 118 Tenn. 377.

Subordination
of perjury

Any person who corruptly procures another to commit perjury, as defined in the preceding paragraph,¹ is guilty of subordination of perjury and shall be punished as provided in said paragraph.²

CIVIL RIGHTS UNDER FEDERAL LAW

The Supreme Court of the United States has in recent years rendered a number of landmark opinions in criminal civil rights cases. Two of these cases are cited briefly as examples:

The Escobedo case

Danny Escobedo was arrested on suspicion of murdering his brother-in-law. He was interrogated for a number of hours by the police and released after the filing of a writ of habeas corpus. When another suspect in the case later told the police that Escobedo had committed the crime in question, he was again arrested and interrogated. Shortly after his second arrest, his lawyer asked the police for permission to talk with him. The police refused this request and one by Escobedo to speak with his attorney. He was held several hours and interrogated. Escobedo alleged that the police told him that if he would sign a confession they would release him and it would not be used against him, and that he then signed the confession.

The Supreme Court on appeal ruled that the confession was

¹Section 39-3301, Tennessee Code Annotated.

²Ibid., Section 39-3304.

not admissible evidence because the defendant was denied his right to be represented by counsel as provided for in the Sixth Amendment to the Constitution of the United States. The court said:

"We only hold that when the process shifts from investigatory to accusatory ---- when its focus is on the accused and its purpose is to elicit a confession ---- our adversary system begins to operate and under the circumstances the accused must be permitted to consult his lawyer."¹

The Miranda case As in the Escobedo case, the accused, Miranda, was arrested, held and interrogated. The accused furnished a confession of his guilt. The Supreme Court of the United States said that when an individual is taken into custody or otherwise deprived of his freedom by the authorities in any significant way, and is subjected to questioning, the privilege against self-incrimination is jeopardized. Procedural safeguards must be employed to protect the individual. Unless other effective means are adopted to notify the person of his right to silence and assure that the exercise of the right will be scrupulously honored, these measures are required:

(1) The accused must be warned prior to questioning that he has the right to remain silent.

¹Danny Escobedo v. State of Illinois, 84A Sup. Ct. Rep. 1758.

(2) The accused must be told that anything he says can be used against him in a court of law.

(3) The accused must be informed that he has the right to the presence of an attorney and that, if he cannot afford an attorney, one will be appointed for him before the interrogation begins.

(4) The opportunity to exercise these rights must be afforded him throughout the interrogation.

Unless and until such warnings and the accused's waiver are demonstrated by the prosecution at the trial, no evidence obtained as a result of the interrogation can be used against the accused.¹

Civil rights
violated under
color of law

Whoever, under color of any law, statute, ordinance, regulation or custom, willfully subjects any inhabitant of any state, territory or district to the deprivation of any rights, privileges, or immunities secured or protected by the United States Constitution or the laws of the United States, or to different punishments, pains or penalties on account of such inhabitant being an alien, or by reason of color, or race, than is prescribed for the punishment of citizens, shall be fined not more than \$1,000 or imprisoned not more than one year, or both; and if

¹Miranda v. State of Arizona, 86-A Sup. Ct. Rep. 1602.

death results from any of the above action, the wrongdoer shall be subject to imprisonment for a term of years or for life.¹

Color of law defined

"Color of law" includes misuse of power possessed by virtue of state law and made possible only because the wrongdoer is clothed with authority of state law. Private persons, jointly engaged with state officials in the prohibited action, are acting under color of law for the purpose of this statute.²

DRIVING UNDER THE INFLUENCE OF AN INTOXICANT, ETC.

Jurisdiction of justice of peace

No justice of the peace shall have jurisdiction to punish any person for driving a motor vehicle on any public road or highway of the state, or street or alley of any city or town, under the small offense law.³

Intoxicated or drugged persons prohibited from driving

It shall be unlawful for any person or persons to drive or be in physical control of an automobile or other motor driven vehicle on any

¹Title 18, ch. 13, sec. 242, United States Code Annotated.

²United States v. Price, 86-A Sup. Ct. Reports 1153; 383 U.S. 787.

³Section 59-1036, Tennessee Code Annotated. (Note: this section limits jurisdiction under state law but does not effect the jurisdiction of city courts in the disposition of such cases under city ordinance.)

of the streets, public roads and highways of the state, or any street or alley of any city or town in this state, while under the influence of an intoxicant, or while under the influence of narcotic drugs, or while under the influence of drugs producing stimulating effects on the central nervous system.

For the purpose of this section, drugs producing stimulating effects of the central nervous system shall include the salts of barbituric acid, also known as malonyl urea, or any compound derivatives or mixtures thereof that may be for producing hypnotic or somnifacient effects, and includes amphetamine, desoxyephedrine or compounds or mixtures thereof, including all derivatives of phenoethylamine or any of the salts thereof, except preparations intended for use in the nose and unfit for internal use.¹

Court to forward
licenses to department

Whenever any person is convicted of any offense for which the law of this state makes mandatory the revocation of the operator's or chauffeur's license, of such person by the department, the court in which such conviction is had shall require the surrender to it of all operator's and chauffeur's licenses then

¹Section 59-1031, Tennessee Code Annotated.

held by the person so convicted,¹ and the court shall forward the same together with a record of such conviction, to the department of safety. Every court having jurisdiction over offenses committed under this chapter, or any statute of the state or municipal ordinance of any city or town regulating the operation of motor vehicles on highways, shall forward to the department a record of the conviction of any person in said court for violation of any of said laws, and may recommend the suspension of the operator's or chauffeur's license of the person so convicted. For the purpose of the chapter dealing with "Motor And Other Vehicles" (Title 59), Tennessee Code Annotated, the term "convicted" shall mean a final conviction; also, a forfeiture of bail or collateral deposited to secure a defendant's appearance in court, which forfeiture has not been vacated, shall be equivalent to a conviction.²

¹Vol. 2, No. 9, Opinions of the Attorney General of Tennessee, 1972-1973, Opinion No. 98. (The attorney general ruled that violation of a city ordinance by driving under the influence of an intoxicant did not require nor authorize the city judge to seize the driver's license under the provisions of section 59-714, Tennessee Code Annotated.)

²Section 59-714, Tennessee Code Annotated.

COMPREHENSIVE ALCOHOL AND DRUG TREATMENT¹

Jurisdiction of court "All courts within this State having jurisdiction to hear and finally determine misdemeanor cases are hereby vested with jurisdiction to make voluntary or involuntary committal of alcoholics and drug addicts to suitable institutions for hospitalization and/or rehabilitation. Said courts are hereby authorized to take judicial knowledge of the fact that a chronic alcoholic or drug addict is a sick person and in need of proper medical, institutional, advisory, and rehabilitative treatment."

Confinement for hospitalization and/or rehabilitation "Whenever it shall appear to any such court, by affidavit of any person having knowledge of the facts, that there is reasonable cause to believe that any resident of this State is an alcoholic or drug addict, habitual inebriate, dipsomaniac or has lost his power of self control from intemperate use of intoxicating liquors, stimulant or sedative, or any controlled substances, such court shall cause the alleged alcoholic or drug addict to be notified of a hearing to be held within ten (10) days. If the affidavit satisfactorily shows that the alleged alcoholic or drug addict is acutely ill, is dangerous to himself or others,

¹Section 33-809, Tennessee Code Annotated.

or other good cause requiring his immediate custody, the court may in the manner and form provided by chapters 6 (Information), 7 (Warrants of Arrest) of title 40 and 40-1101--40-1118, cause such person to be brought before the court. In any proceedings under this section, the alleged alcoholic or drug addict shall have the benefit of legal counsel and all other civil rights assured by the Constitution and the statutes of this State. If he demand, the alleged alcoholic or drug addict shall be entitled to have a jury determine the issues in the cause and should demand be made in a court having no jury, the case shall be certified and transferred to a court having a jury with jurisdiction to try causes under this section. Any resident of this State may voluntarily submit to the jurisdiction of the court as an alcoholic or drug addict whereupon the same proceedings shall be had as if originated under the preceding provisions."

Term of confinement "Upon finding that such person is a chronic alcoholic, drug addict, dipsomaniac, habitual inebriate or has lost his power of self control from the intemperate use of intoxicating liquors or other forms of stimulants, sedative, or controlled substance, the court may order the confinement of such person for a period of not less than thirty (30) days or more than twelve (12) months in any institution determined

by the court to be a suitable place for confinement, hospitalization and/or rehabilitation of alcoholics and drug addicts. Any person so committed shall have the right of appeal to the court to which appeals are ordinarily taken from the committing court. All judicial proceedings for the commitment of alcoholics or drug addicts shall be confidential and shall not be divulged except for cause upon order of the court in which the application is filed or heard, and no person committed for treatment under the provisions of this chapter through voluntary or involuntary procedure shall forfeit or be abridged thereby from any of his or her rights as a citizen of the United States or the State of Tennessee."

Costs taxable against
estate of person
committed

"The costs of the proceedings under this section shall be taxable against the estate of the person. However, upon a nulla bona¹ return of execution against the estate of such person, the court may retax such costs and order the same to be paid out of the general fund of the county as provided in misdemeanor cases."

Unauthorized absence
from treatment

"Whenever an individual is guilty of unauthorized absence from the treatment program, the committing court may issue an attachment for the

¹Nulla bona is defined as meaning: No goods of the defendant have been found on which levy can be made. (Bouvier's Law Dictionary, vol. II, page 2384.)

individual and order his return to the center for the completion of the commitment period. Nothing in this chapter shall preclude a person who has been discharged from being recommitted under this chapter, irrespective of the periods of time of any previous commitments."

ADMISSION TO BAIL

Bailable offenses All prisoners shall be bailable by sufficient sureties, unless for capital offenses where the proof is evident or the presumption is great.¹

Admitted to bail by committing When the defendant has been arrested and/or held to answer for any bailable offense, he is entitled to be admitted to bail by the committing magistrate, by any judge of the circuit or criminal courts, by any county judge, or by the clerk of any circuit or criminal court; provided that if the defendant be admitted to bail by the clerk of any circuit or criminal court he shall have a right to petition the judge of such court if he feels that the bail set is excessive, and he shall be given notice of this fact by such clerk. Further, the clerk of any circuit or criminal court may

¹Section 40-1201, Tennessee Code Annotated.

only admit the defendant to bail when the judge is not present in the court and the clerk reasonably believes that he will not be present within three (3) hours after the defendant has been committed to the county or city jail, following arrest.

In no event may a clerk set the amount of bail in excess of:

(1) one thousand dollars (\$1,000) if the defendant is charged with a misdemeanor;

(2) ten thousand dollars (\$10,000) if the defendant is charged with a felony that does not involve a crime committed against a person;

(3) fifty thousand dollars (\$50,000) if the defendant is charged with a felony that involves a crime committed against a person; or

(4) one hundred thousand dollars (\$100,000) if the defendant is charged with some form of homicide.¹

By whom taken Whenever the amount of bail is prescribed by the court, magistrate, or officer having authority to admit to bail, the undertaking of bail may be taken by the

¹Section 40-1202, Tennessee Code Annotated.

sheriff, or any magistrate of the county in which the defendant is arrested, confined or legally surrendered.¹

Taking before
commitment

The committing magistrate and/ or the city court clerk of any incorporated municipality or city or his deputies, before whom a defendant is brought for examination on a warrant or arrest, is authorized to take bail, either for his appearance for examination or for his appearance at court to answer the charge.²

Taking after
commitment

If the defendant is committed to jail in default of bail, the committing magistrate or sheriff and/or the city court clerk of any incorporated municipality, or city or his deputies may take bail any time thereafter for his appearance at the court having cognizance of the offense.³

¹Section 40-1206, Tennessee Code Annotated.

²Ibid., 40-1207.

³Ibid., Section 40-1208.

Amount of bail

The following amounts of bail may be prescribed for justices of the peace and sheriffs:

(1) For all cases above the degree of petit larceny, the bail shall be one thousand dollars (\$1,000).

(2) For petit larceny, five hundred dollars (\$500).

(3) For any charge under the degree of petit larceny, two hundred dollars (\$200).¹

Amount of bond
discretionary

The provisions set out above (amount of bail) are not intended to prevent such officers from requiring larger bail where the circumstances of the party or the character of the offense, in the opinion of the officer, render it advisable or proper; nor are they intended to limit the bail to be taken by court of record, or the judges thereof, the amount of such bail being left, as heretofore, to the sound discretion of such courts and judges.²

¹Section 40-1212, Tennessee Code Annotated.

²Ibid., 40-1213.

Contents of bond Bail, when not taken in open court, is given by a written undertaking, signed by the defendant and at least two (2) sufficient sureties and approved by the magistrate or officer.¹

Infants and lunatics Lunatics and infants need not acknowledge or execute the undertakings of bail, but any person may enter into an undertaking for their appearance.²

Sufficiency of sureties Each of the sureties shall be worth the amount expressed in the undertaking, subject to the execution; but the court, magistrate, or officer taking bail, may allow more than two (2) sureties to justify severally in amounts less than that expressed in the undertaking, if the whole qualification be equivalent to two (2) sufficient sureties.³

¹Section 40-1214, Tennessee Code Annotated. For form see page 158.

²Ibid., Section 40-1218.

³Ibid., Section 40-1219.

Evidence as
to sureties

The district attorney, or the court, magistrate, or officer may examine the sureties, on oath, touching their sufficiency, in such manner as they may deem proper. The court or magistrate may also receive other testimony, either for or against the sufficiency of sureties.¹

Irregularities
in undertaking

No sureties are discharged by reason of the want of any of the qualifications, required in this chapter, or by reason of there not being the requisite number of sureties; or by reason of any other agreement than is expressed in the undertaking; or by reason of infancy, lunacy, or any other incapacity of any of the other parties thereto; or because the defendant has not joined in the same.²

Return of bail
to court

The undertaking of bail, when taken by magistrate or officer, shall be returned to the court having recognizance of the offense, with the other papers, if any, and if there are no other papers, then forthwith in the same manner as a *capias*.³

Duration of bond

Where the defendant in a criminal case executes a bond, or recognizance, before any court or other person authorized by law to take the same, for his personal appearance

¹ Section 40-1220, Tennessee Code Annotated.

² Ibid., Section 40-1221.

³ Ibid., Section 40-1222.

before a court to answer a criminal charge, the said bond or recognizance shall be valid and binding upon the defendant and his sureties thereon, for the defendant's personal appearance before the court from term to term until the case is finally terminated or stricken from the docket and the defendant discharged by the court and the defendant shall not be required to renew said bond or recognizance, unless ordered to do so by the court because of the insufficiency of said bond in amount, or the insolvency of the same or on forfeiture of bail, or for other good and sufficient causes, provided that the sureties on said bond may surrender the prisoner and be released of said bond as now provided.¹

Defects in bond
no defense

Where such bail bond or recognizance is executed by the accused, the same shall be valid and binding on him and his sureties for his personal appearance before the court as prescribed by law, or if not payable or conditioned as prescribed by law for the appearance of the accused before the court from term to term of said court, it shall be held as if said bond or recognizance had expressly so stipulated and conditioned on its face, and no defect in said bond or recognizance shall avail the defendant and his sureties upon default to appear.²

¹Section 40-1223, Tennessee Code Annotated.

²Ibid., Section 40-1224.

Surrender of
defendant

At any time before the forfeiture of their undertaking, the bail may surrender the defendant, in their exoneration, or he may surrender himself to the officer.¹

Surrender to sheriff

The surrender shall be made to the sheriff of the county in which the defendant is bound to answer for the offense, whether by change of venue or otherwise, and such sheriff is not bound to accept the surrender unless made at the place of holding the court in said county, or at the sheriff's residence.²

Arrest by bail

For this purpose, the bail may arrest the defendant on a certified copy of the undertaking at any place in the state or may, by written authority endorsement on such copy, authorize another person to make the arrest.³

Cash deposit in
lieu of bail

The defendant, at any time after an order admitting him to bail, may, instead of bail, deposit with the clerk of the court in which he is held to answer, the sum mentioned in the order.⁴

¹Section 40-1225, Tennessee Code Annotated.

²Ibid., Section 40-1226.

³Ibid., Section 40-1227.

⁴Ibid., Section 40-1230.

Officer to discharge The defendant shall be discharged from custody upon delivering to the officer, in whose custody he is, a certificate from the clerk of the deposit provided for in the preceding section (40-1230.)¹

Substitution of cash for bail If the defendant has given bail, he may, at any time before the forfeiture of the undertaking, in like manner deposit the sum mentioned in the undertaking and upon the deposit being made, the sureties shall be exonerated.²

Substitution of bail for cash On the other hand, if the money be deposited and the defendant afterwards gives bail, the money shall be repaid to him by the clerk, upon the certificate of the magistrate or court before whom the bail is taken that bail has been given in conformity with the order of admission to bail.³

Cash deposit to pay fine Where the money has been deposited, if it remains on deposit at the time of a judgment for the payment of a fine and cost, the clerk shall, under the direction of the court, apply the money in satis-

¹Section 40-1231, Tennessee Code Annotated.

²Ibid., Section 40-1232.

³Ibid., Section 40-1233.

faction thereof, paying the surplus, if any, to the defendant.¹
Deposit of money in lieu of bail, when not authorized by the city charter or ordinance, is void, and the forfeiture of such a deposit by the city authorities, upon the ground of the non-appearance of the accused, is void and confers upon the city no title to the money.²

Replacement of
insufficient bail

A defendant may be required by the court to enter into another undertaking when it appears that the undertaking entered into is not sufficient, or has, from any cause, become insufficient.³

Rearrest for
insufficiency
of bail

The court having cognizance of the case may, after the defendant has given bail, order him to be again arrested and committed in the following cases:

(1) When, upon the finding of an indictment, the court deems the bail taken by or the money deposited with the committing magistrate insufficient;

(2) When it satisfactorily appears to the court that his bail, or either of them, is dead, or insufficient, or removed from the state;

¹Section 40-1234, Tennessee Code Annotated.

²Brasfield v. Milan, 127 Tenn. 561, 155 S.W. 926.

³TCA, Section 40-1235.

(3) When, by reason of his failure to appear, the defendant has incurred a forfeiture of his bail or money deposited instead thereof.¹ When the bond is found insufficient, the order of arrest must recite generally the facts upon which it is founded.²

Authority for rearrest The defendant may be arrested pursuant to the order upon a certified copy thereof, or upon a capias issued thereon, in any county in the state.³

Failure to appear, commitment If the order recites, as the grounds upon which it is made, the failure of the defendant to appear for judgment upon conviction, the defendant shall be committed according to the requirements of the order.⁴

Bail fixed on recommitment If the order be made for any other cause, and the offense be bailable, the court may fix the amount of bail and may cause a direction to be inserted in the order, that the defendant be admitted to bail in the sum fixed, which shall be specified in the order.⁵ The defendant cannot be rearrested, even by court order, where the

¹Section 40-1236, Tennessee Code Annotated.

²Ibid., Section 40-1237.

³Ibid., Section 40-1238.

⁴Ibid., Section 40-1239.

⁵Ibid., Section 40-1240.

court has taken surety for the fine and costs, and discharged him. The only remedy is on the bond or recognizance of the fine and costs.¹

Guaranteed arrest
or bail

As used in this and the following paragraph,² the term "guaranteed arrest or bail bond certificate" means a printed card or other certificate issued by an association to any of its members, which is signed by the member and contains a printed statement that the association and/or the surety company is licensed to do business in this state and that the guaranteed arrest or bail bond certificate is issued pursuant to the terms of this and the following paragraph, and:

(1) The bond guarantees the appearance of the person whose signature appears on the card or certificate; and

(2) That the surety company will, in the event of the failure of the person to appear in court at the time set for appearance, pay any fine or forfeiture imposed upon such person in an amount not to exceed two hundred dollars (\$200).³

Conditions of acceptance in lieu of cash
bond

A guaranteed arrest or bail bond certificate, presented by the person whose

¹ Hamilton v. State, 68 Tenn. 355.

² The "following paragraph" is TCA, Section 40-1242.

³ TCA, Section 40-1241.

signature appears thereon, shall be accepted in lieu of cash bail, in an amount not to exceed two hundred dollars (\$200), as an arrest or bail bond to guarantee the appearance of the person in any court of this state, at the time required by such court, when he is arrested for violation of any traffic law of the state or of any traffic ordinance of any municipality therein relating to the operation of a motor vehicle. The guaranteed arrest or bail bond certificate shall be subject to all of the limitations appearing on the face thereof but, when accepted, it is subject to the same forfeiture and enforcement provisions as a bail bond or cash bond. However, the violation must have been committed prior to the expiration date shown on the guaranteed arrest or bail bond certificate.¹

Guaranteed arrests,
etc., supplemental

The two preceding paragraphs, relating to guaranteed arrests or bail bonds, are supplementary to the chapter titled "Admission to Bail."²

Failure to appear
conditional, judgment

If the defendant who gives bail or makes a cash deposit as provided in chapter titled "Admission to Bail"³ does not appear according to

¹Section 40-1242, Tennessee Code Annotated.

²Ibid., Sections 40-1201 through 40-1240, inclusive.

³Ibid., See: Sections 40-1201 through 40-1240.

his undertaking, a conditional judgment may be entered against him and his sureties, or against the defendant alone in case of a deposit. Provided however, that no forfeiture or conditional forfeiture of any appearance or bail bond shall be rendered in any case where a sworn statement of a licensed physician is furnished the court showing that the principal in such bond is prevented from attending by some mental or physical disability, or where a sworn affidavit of a jailer, warden or other responsible officer of a jail, workhouse or penitentiary in which the principal is being detained, shall be furnished the court. The appearance or the bail bond shall remain in full force and effect until the principal is physically or mentally able to appear, or until a detainer against the principal is filed with the detaining authority. On the filing of such a detainer, the court shall exonerate the bondsman and sureties but said bondsman and sureties shall in any event remain liable for the expense of returning the principal when said principal is released by the detaining authority.¹

Officer prohibited
from acting as
professional bondsman

It shall be unlawful for any person while serving as a constitutionally elected peace officer, or as his deputy, or any duly elected or

¹Section 40-1301, Tennessee Code Annotated.

appointed county official, to act as a professional bondsman, directly or indirectly.¹

CONDITIONAL PAYMENT OF FINES

Payment of fines by installments, etc.

When any court of this state, including municipal courts for violation of municipal ordinances, imposes a fine upon an individual, the court may direct as follows:

- (1) That the defendant pay the entire amount at the time sentence is pronounced; or
- (2) That the defendant pay the entire amount at some later date; or
- (3) That the defendant pay the fine in specified portions or installments at designated periodic intervals and that such portion be remitted to a designated official, who shall report to the court in the event of any failure to comply with the order; or
- (4) Where the defendant is sentenced to a period of probation as well as a fine, that payment of the fine be a condition of the sentence.²

Failure to pay fine

If the defendant fails to pay the fine as directed, or if he is unable to pay the fine and so represents

¹Section 40-1413, Tennessee Code Annotated.

²Ibid., Section 40-3207.

upon application to the court, the court, after inquiring into and making such further investigation, if any, which it may deem necessary with regard to the defendant's financial and family situation and the reasons for nonpayment of the fine, including whether such nonpayment was contumacious or was due to indigency, may enter any order which it could have entered under Section 40-3207 (see paragraph above) or may reduce the fine to an amount which the defendant is able to pay, or may direct that the defendant be imprisoned until the fine, or any portion of it remaining unpaid or remaining undischarged after a pro rata credit for any time which may already have been served in lieu of payments, is paid; and the court shall determine and specify in the light of defendant's situation and means and of his conduct with regard to the nonpayment of the fine, the period of any imprisonment in default of payment of the fine, subject to the following limitations:

(1) In no event shall such period of imprisonment exceed one (1) day for each five dollars (\$5.00) of the fine;

(2) Where the fine is imposed for a felony, the period may not exceed one (1) year;

(3) Where the fine is imposed for a misdemeanor, the period may not exceed one-third ($1/3$) of the maximum authorized term of imprisonment;

(4) Where the fine is imposed for a municipal violation, the period may not exceed ten (10) days; and

(5) Where a sentence of imprisonment as well as a fine is imposed, the aggregate of the period and the term of the sentence may not exceed the maximum authorized term of imprisonment.

Whenever a court orders a defendant to pay a fine, imposed as a result of a traffic violation, in installment payments, the court shall revoke the defendant's privilege to operate a motor vehicle in this state upon the failure of the defendant to comply with the order of the court. If the defendant's privilege to operate a motor vehicle has been revoked for the failure to comply with such court order, the privilege shall remain so revoked until the total amount of the fine imposed is paid.¹

Collection of fines, Unless discharged by payment or service of imprisonment in default of a fine, a fine may be collected in the same manner as a judgment in a civil action. Costs may be collected in the same manner as a judgment in a civil action, but shall not be deemed part of the penalty, and no person shall be imprisoned under this section in default of payment of costs. The district attorney-

¹Section 40-3208, Tennessee Code Annotated.

general or the county or municipal attorney, as applicable, may in his discretion, and must, upon order of the court, institute proceedings to collect said fine as a civil judgment in the court of appropriate jurisdiction.¹

FINE FOR MOVING TRAFFIC VIOLATION

In addition to all other fines, fees, costs and punishments now prescribed by law, there shall be imposed or assessed an additional penalty of two dollars (\$2.00) upon the driver of any motor vehicle upon his conviction by any judge in any court of the state or plea of guilty or submission to fine for any offense involving a moving traffic violation or upon conviction or plea of guilty or submission to fine for any moving traffic violation prescribed by any county or municipal ordinance. For the purpose of this section, the term "moving traffic violation" shall mean any offense which can occur only if the motor vehicle is in motion.

All penalties collected under this section shall be forwarded by the office of the court who collects the same to the state treasurer, within thirty (30) days after the penalty or forfeiture is collected. Provided that the office of city courts which collect the penalties provided for herein shall be entitled to the same commission allowed clerks of courts of record and clerks

¹Section 40-3209, Tennessee Code Annotated.

of general sessions courts for receiving and paying over taxes, fines, forfeitures, fees, and amercements, such commission being in the amount of two and one-half cents (2½¢) on the dollar. Such commission may be deducted from reports of collections submitted to the department of revenue each month.¹

RIGHT OF APPEAL

Any person dissatisfied with the judgment of a justice of the peace, recorder or other officer of a municipality charged with the conduct of trials, in a civil action, may, within ten (10) entire days thereafter, Sundays exclusive, appeal to the next term of circuit court.²

SHERIFF MAY ENFORCE ORDINANCES³

Duties of sheriff In all municipalities with population under 30,000, (towns in classes five (5) through eight (8) inclusive pursuant to section 16-1108, Tennessee Code Annotated) the municipality may authorize the sheriff of the county wherein the municipality lies to enforce its ordinances provided such municipality has filed a certified copy of its ordinances with the sheriff and the general

¹Section 59-1043, Tennessee Code Annotated.

²Ibid., Section 27-501.

³Ibid, Sections 8-810, 12-804 (a) and 16-1104.

sessions court of such county.

The judge of the court of general sessions shall direct the clerk of the court that all fines collected shall be paid over to the municipality and all costs held for proper distributions in accordance with section 16-1122, Tennessee Code Annotated.

Where the court costs are not adequate, the municipality may enter into an agreement with the sheriff, court of general sessions and the governing body of the county to provide the cost of such enforcement.

ARRESTS

Arrests by whom An arrest may be made either (1) by an officer under a warrant, (2) by an officer without a warrant, (3) by a private person.¹

Offenses, presence of magistrate When a public offense is committed in the presence of a magistrate, he may, by verbal or written order, command any person to arrest the offender, and thereupon proceed as if he had been brought before him on a warrant of arrest.²

Arrests without a warrant An officer may, without a warrant, arrest a person:

¹Section 40-801, Tennessee Code Annotated.

²Ibid., Section 40-802.

(1) For a public offense committed or a breach of the peace threatened in his presence.

(2) When a person has committed a felony, though not in his presence.

(3) When a felony has in fact been committed, and he has reasonable cause for believing the person arrested to have committed it.

(4) On a charge made, upon reasonable cause, of the commission of a felony by the person arrested.

(5) Who is attempting to commit suicide.¹

It is not possible to define reasonable cause in terms to fit all cases arising and each case must stand on its own facts.² Generally, it may be described as such cause as would justify a reasonable man in believing that the person arrested was guilty of a felony.³

Authority of private persons to arrest

A private person makes an arrest at his own peril, and to justify the arrest, he must show as a fact that the offense for which the arrest was made was in fact committed and probable cause to believe that the offense was committed will not justify the

¹Section 40-803, Tennessee Code Annotated.

²State v. Tolden, 224 Tenn. 119, 451 S.W. 2d. 432.

³Campbell v. State, 1 Tenn. Cr. App. 586, 447 S.W. 2d 877.

arrest when, in fact, no offense was committed.¹ Such private person who makes an arrest shall receive no arrest fee or compensation therefor.² However, he may make a lawful arrest under the following circumstances:

- (1) When a public offense is committed in his presence;
- (2) When the person arrested has committed a felony, although not in his presence;
- (3) When a felony has been committed, and he has reasonable cause to believe that the person arrested committed it.

Time arrests
to be made

Arrests by officers for public offenses,⁴ and arrests by private persons for felonies, may be made on any day at any time.⁵

Notice of authority
by officer

When arresting a person, the officer shall inform him of his authority and the cause of the arrest, and exhibit the warrant if he have one, except when he is in actual commission of the offense, or is pursued immediately after an escape.⁶ When a party is taken in the com-

¹Martin v. Castner-Knott Dry Goods Co., 27 Tenn. App. 421, 181 S.W. 2d 638.

²Section 40-816, Tennessee Code Annotated.

³Ibid.

⁴For arrest by an officer see: TCA, Section 40-804.

⁵Ibid., Section 40-817.

⁶Ibid., Section 40-806.

mission of an offense, or upon fresh pursuit, or when the officer is violently assaulted upon coming up with the accused, the officer is not required to make known his authority or the cause of the arrest.¹

Prisoner's right to phone call

No person under arrest by any officer or private citizen shall have his name entered on any book, ledger, or any other record until such time that said person has successfully completed a telephone call to an attorney, relative, minister, or any other person that he shall choose without undue delay. One (1) hour shall constitute a reasonable time to make a telephone call; then he shall be booked or docketed immediately.²

Notice of arrest by private person

A private person shall, at the time of the arrest, inform the person arrested of the cause, except when he is in the actual commission of the offense, or when arrested on pursuit.³

Officer authorized to break in to arrest

To make an arrest with or without a warrant, the officer may break open any outer or inner door or window of a dwelling house if, after

¹Lewis v. State, 40 Tenn. 127.

²Section 40-806, Tennessee Code Annotated.

³Ibid., Section 40-818.

notice of his office, authority, and purpose he is refused admittance.¹ (In order to justify such breaking without a warrant, the officer must have reasonable cause to believe the occupant has committed a felony.)

Private person
authorized to break
in to arrest

If the person to be arrested has committed a felony and a private person, after notice of intention to make the arrest, is refused admittance, he may break open an outer or inner door or window of a dwelling house to make the arrest.² After due demand, either a peace officer or a private person may, without a warrant, break open doors for the purpose of apprehending a felon.³

Arrest by private
person, disposition

A private person who has arrested another for a public offense shall, without unnecessary delay, take him before a magistrate or deliver him to an officer.⁴

Pursuit after escape

If a person arrested escapes or be rescued, the person from whose custody he escaped or was rescued may immediately pursue and retake him at any time,

¹Section 40-807, Tennessee Code Annotated.

²Ibid., Section 40-819.

³White v. State, 210 Tenn. 78, 356 S.W. 2d. 411.

⁴TCA, Section 40-820.

and in any place within the state.¹ Except where the escape itself is a felony and the further exception of immediate pursuit for recapture, there is no authority conferred by our statutes upon a private person, or an officer without a warrant, to make an arrest for an escape.²

Breaking in to recapture escapee To retake the party escaping or rescued, the person pursuing may, after notice of his intention and refusal of admittance, break open any outer or inner door or window of a dwelling house.³

Shoplifting A peace officer, or merchant, or merchant's employee who has probable cause for believing that goods held for sale by the merchant have been unlawfully taken by a person and that he can recover them by taking the person into custody, may, for the purpose of attempting to effect such recovery, take the person into custody and detain him in a reasonable manner for a reasonable length of time. Such taking into custody and detention by a peace officer, merchant or merchant's employee shall not render such police officer, merchant, or merchant's employee criminally or civilly

¹ Section 40-822, Tennessee Code Annotated.

² McGaslin v. McCord, 116 Tenn. 690, 94 S.W. 79.

³ Section 40-823, Tennessee Code Annotated.

liable for false arrest, false imprisonment or unlawful detention.¹

CITY WARRANTS OF ARREST

No oath required Prosecution for violation of a city ordinance is a civil action rather than criminal. It is essential that a prosecution for a violation of a state criminal statute begin with a warrant issued on oath of some person. This rule does not apply to a proceeding brought by a city for violation of its ordinances. This is true even though the offense may be prohibited by both city ordinance and state law.²

Signature of judge The signature of the judge on a city warrant of arrest need not be in the handwriting of the person who is by law required to sign it. Any signature, which the party issuing it may adopt as his own, whether written, typed, stamped, printed or lithographed, is considered to be sufficient compliance with the requirement that such paper be signed.³

¹Section 40-824, Tennessee Code Annotated.

²City of Nashville v. Baker, 167 Tenn. 661, 72 S.W. 2d. 169.

³O'Dell v. City of Knoxville, 54 Tenn. App. 59, 388 S.W. 2d.150

STATE WARRANTS OF ARRESTMagistrates to
issue warrants

For the apprehension of persons charged with public offenses, magistrates are authorized, within their jurisdiction, to issue warrants of arrest, under the rules and regulations stated in the law.¹ They may be issued not only in the county in which the offense was committed, but also in any county in which the person is found.²

Examination of
informant

Upon information made to any magistrate of the commission of a public offense, he shall examine, on oath, the informant, reduce the examination to writing, and cause the examination to be signed by the person making it.³

Contents of
examination

The written examination shall set forth the facts stated by the informant tending to establish the commission of the offense and the guilt of the defendant.⁴

¹Sections 40-701 through 40-715, Tennessee Code Annotated.

²McCaslin v. McCord, 116 Tenn. 690, 94 S.W. 79.

³TCA, Section 40-702.

⁴Ibid., Section 40-703.

Issuance of warrant If the magistrate is satisfied therefrom that the offense complained of has been committed, and there is reasonable ground to believe the defendant is guilty thereof, he shall issue a warrant of arrest.¹ However, where the informant does not know of his own knowledge, but has been told by a third party that the offense had been committed, the warrant has been issued without sufficient legal grounds.²

Issuance and return Any process, warrant, or precept, authorized to be issued by any of the judges, justices of the peace, or clerks of the court, in any criminal prosecution on behalf of the state, may be issued at any time, and made returnable to any day of the term.³

Contents of warrant A warrant of arrest is an order, in writing, stating the substance of the complaint, directed to a proper officer, signed by a magistrate, and commanding the arrest of the defendant.⁴

Name of defendant, offense stated The warrant should specify the name of the defendant, but if it be unknown to the

¹Section 40-704, Tennessee Code Annotated.

²State v. Good, 77 Tenn. 240.

³TCA, Section 40-705.

⁴Ibid, Section 40-706.

magistrate, the defendant may be designated therein by any name. It should also state the offense either by name, or so that it can be clearly inferred.¹

County and
magistrate shown

The warrant should show, in some part, the county in which issued, the name and initials of the office of the magistrate.²

Officer to
whom directed

The warrant should be directed to any lawful officer of the state, but if executed by any officer having authority, it is valid without regard to its direction.³

Executed by

It may be executed by any sheriff, or officer acting as sheriff, or his deputy, or constable, or marshal, or policeman of any city or town, acting within their county, or by any person otherwise authorized by law.⁴
(Constables in certain counties are excluded by state law.)

Direction to outside
of county

When the person accused has fled, or resides out of the county where the offense was committed, the warrant may be issued to any lawful officer of any

¹Section 40-708, Tennessee Code Annotated.

²Ibid., Section 40-709.

³Ibid., Section 40-710.

⁴Ibid., Section 40-711.

county in the state, and the accused may be brought before the magistrate issuing the warrant, or any other magistrate.¹

Execution out-
side county

When the sheriff or deputy sheriff, coroner, or any other officer of any county in this state, shall have in his hands a warrant or capias for the arrest of any person charged with the commission of a crime, it shall be lawful for the sheriff, deputy sheriff, coroner, or any other officer to execute such process, and arrest the person so charged in any county in this state.²

Warrant may be
issued by clerk

Clerks of courts of general sessions shall have jurisdiction and authority, concurrent with that of the judges thereof, to issue warrants for the arrest of persons.³

SEARCH AND SEIZURE

Definition, search
warrant

A search warrant is an order in writing in the name of the state, signed by a magistrate,⁴ directed to the sheriff, any constable, or any peace officer of the county, commanding him to search for personal property,

¹Section 40-712, Tennessee Code Annotated.

²Ibid., Section 40-713.

³Ibid., Section 40-715.

⁴Section 40-114, Tennessee Code Annotated, designates, among others, the mayor or chief officer and the recorder of any incorporated city or town as a magistrate for the issuance of warrants.

and bring it before the magistrate.¹ A search, in a constitutional sense, means searches and seizures by the examination of a man's home, buildings, premises, his person, or what not, with view to discovery of contraband, illicit stolen property or some evidence of guilt to be used in criminal prosecution against the accused and implies invasion and quest which in turn implies some sort of force, actual or constructive, much or little.²

Constitutional restraints

If a magistrate is satisfied of the existence of grounds of the application, or that there is probable grounds to believe their existence, he shall issue a search warrant signed by him, directed to the sheriff, any constable, any peace officer, commanding him forthwith to search the person or place named for the property specified, and to bring it before the magistrate.³ However, it can only be issued on probable cause, supported by an affidavit, naming or describing the person and particularly describing the property and place to be searched.⁴ Probable cause, authorizing issuance of a search warrant by a magistrate, is reasonable

¹Section 40-501, Tennessee Code Annotated.

²Lester v. State, 216 Tenn. 615, 393 S.W. 2d 288.

³TCA, Section 40-505.

⁴Ibid., Section 40-503. For form of warrant see page 166.

ground for suspicion, supported by circumstances sufficiently strong in themselves to warrant a cautious man in the belief the accused is guilty of the offense charged.¹

United States

The Constitution of the United States provides that the right of the people to be secure in their persons, houses, papers and effects, against unreasonable searches and seizures, shall not be violated, and no warrants shall be issued but upon probable cause, supported by oath or affirmation, and particularly describing the place to be searched and the persons or things to be seized.² The prohibition of this amendment does not apply to the states, but only to federal officers and agents.³ However, it has been read or incorporated by the Supreme Court of the United States into the due process clause (14th Amendment), which does apply to officers of the state.⁴

State of Tennessee

The Constitution of the State of Tennessee provides that the people shall be secure in their persons, houses, papers and possessions, from unreasonable searches and seizures; and that general warrants, whereby an

¹Lea v. State, 181 Tenn. 378, 181 S.W. 2d. 351.

²Amendment 4, Constitution of the United States.

³National Safe Deposit Co. v. Stead, 232 U.S. 58.

⁴Sneed v. State, 221 Tenn. 6, 423 S.W. 2d. 857.

officer may be commanded to search suspected places without evidence of the fact committed or to seize any person or persons not named whose offenses are not particularly described and supported by evidence, are dangerous to liberty and ought not to be granted.¹ Search warrants also must conform to the statutory requirements of state law.² At the very foundation of our state law is the right of the people to be secure in their persons, houses, papers and possessions. Infringement of such individual rights cannot be tolerated. The enforcement of no statute is of sufficient importance to justify indifference to the basic principles of our government.³ This constitutional mandate is addressed not only to the legislature, but to every officer of jurisdiction including the judiciary and must be liberally construed in favor of the individual.⁴

Who may issue

Magistrates given the power to issue search warrants in the state⁵ are justices of the Supreme Court, the judges of the circuit and criminal courts, justices of the peace, police, and other special justices appointed or

¹Article 1, section 7, Constitution of Tennessee.

²Hampton v. State, 148 Tenn. 155, 252 S.W. 1007.

³Craven v. State, 148 Tenn. 517, 256 S.W. 431.

⁴Hughes v. State, 176 Tenn. 330, 141 S.W. 2d. 477.

⁵Section 40-505, Tennessee Code Annotated.

elected in a city, village or town, the mayors and recorders of towns upon whom criminal jurisdiction is conferred by law.¹

Basis for issuance A magistrate who issues a search warrant must be mindful of the provisions of the constitution of the state, the statutes regulating issuance,² and the interpretations placed on such provisions by the State Supreme Court. The grounds for issuance are statutory and may be any one of the following:

(1) Where property was stolen or embezzled.

(2) Where property was used as a means of committing a felony.

(3) Where property is in the possession of any person with the intent to use it as a means of committing a public offense, or in possession of another to whom it may have been delivered for the purpose of concealing it, or preventing its discovery.

(4) Any other ground provided by law.³

Before issuance of a search warrant, the magistrate shall examine on oath the complainant and any witness he may produce, take their affidavits in writing, and cause these affidavits to be subscribed by the persons making them. The affidavits

¹Section 40-603, Tennessee Code Annotated; see also Section 40-114.

²Hampton v. State, 148 Tenn. 155, 252 S.W. 1007.

³Section 40-502, Tennessee Code Annotated.

must set forth facts tending to establish the grounds for the application or probable cause for believing that they exist.¹

Determination of probable cause a judicial act Affidavits supporting probable cause shall name or describe the person, and particularly describe the property and the place to be searched.²

Determination of the existence of probable cause is a judicial act and cannot legally be performed by the clerk of the court.³

The nature of the information must be set out in the affidavit; however, it is the duty of the issuing magistrate to satisfy himself that the particular or specific facts furnished by the informant will justify the issuance of a search warrant.

So long as there is material evidence before the magistrate to support issuance, the information is not later subject to contradiction.⁴

Description of person to be searched A search of the person must be justified by an affidavit supporting probable cause and describing the person to be searched.⁵ A warrant authorizing the search of the person of a suspected individual and naming

¹Section 40-504, Tennessee Code Annotated.

²Ibid., Section 40-503.

³Marsh v. State, 185 Tenn. 103, 203 S.W. 2d 372.

⁴Owens v. State, 217 Tenn. 544, 399 S.W. 2d. 507.

⁵TCA, Section 40-503.

such person as "John Doe" would generally be invalid because the name so used is considered to be that of a fictitious person.¹

Description of property to be searched It is expressly required by section 40-503, T.C.A., that the search warrant particularly describe the place to be searched. The word "particularly" must be deemed to have been intentionally used by the legislature. It is apparent the legislature intended the search warrant to be clear of ambiguity as to the place to be searched and that the word was used in response to the constitutional prohibition against unreasonable search.² The place to be searched should be designated with sufficient accuracy to prevent the officer from searching the premises of another.³ A description giving the name of the street and the street number in a particular town meets the requirements of a particular description, provided there are not two streets in that city with identical names and numbers. As may be seen, a particular description must leave no discretion to the officer in a choice between one or more places occupied by strangers to the process.⁴

¹Seals v. State, 157 Tenn. 538, 11 S.W. 2d. 879.

²Dolen v. State, 187 Tenn. 663, 216 S.W. 2d. 351.

³Lea v. State, 181 Tenn. 378, 181 S.W. 2d. 351.

⁴State v. Bass, 153 Tenn. 162, 181 S.W. 936.

Description of
property to be
seized

The description of the property to be seized will vary according to whether the identity of the property, or its character, is the matter of concern. Thus, where the purpose of the search is to find "specific property," it should be so particularly described as to preclude the possibility of seizing any other. On the other hand, if the purpose is not "specified property" but any property of a "specified character" which by reason of its nature, and of the place where and the circumstances under which it may be found, if found at all, would be illicit, a description other than such character, place and circumstances, would be unnecessary and ordinarily impossible.¹ Where intoxicating liquor is the object of search, the general description, "a quantity of intoxicating liquor in his possession in violation of law,"² is a valid description of property of a "specified character."

Probability of
violation must exist
at the time of issuance

There must be probable cause justifying a conclusion by a reasonable person that a breach of law is existing on a person or on his premises at the time of the application for the warrant.³ The date on which the officer's informant secured the information

¹Lea, op. cit.

²Hampton v. State, 148 Tenn. 155, 252 S.W. 1007.

³Waggener v. McCanless, 183 Tenn. 258, 191 S.W. 2d. 551.

used by him to apply for the search warrant is essential and must appear on the face of the affidavit. The nearer it is to the time of the application, the more effective it is to justify a conclusion of probable cause.¹

Time violation
occurred to be shown

The affidavit cited above was as follows:

"The affiant was informed by a reliable person that the informer was on the premises and saw a quantity of whiskey delivered and put in the above described building on the premises." The court said that it will be noted that the applicant does not disclose a date that he received the information nor the date when his informant visited the dwelling. "It is essential that the date on which the alleged offense was committed be stated in the affidavit in order that the magistrate may determine that probable cause exists for the issuance of the warrant." The court, in a later case,² in referring to the Welchance case cited several cases in point and said the use of the word "date" in the Welchance case was synonymous with the word "time." The court said it had no doubt that if the time or date is definite and clearly fixed, no method for fixing it could be reasonably required." - - - a statement by an observer at the time he made application for a search warrant that he had

¹Welchance v. State, 173 Tenn. 26, 114 S.W. 2d. 781.

²Waggener, op. cit.

just recently seen a quantity of liquor stored on certain premises and had within the last few days, bought drinks of intoxicating liquor on these premises would lead to the conclusion that the unlawful condition continued to exist on these premises at the time of the application for the warrant."¹

Source and nature
of information

Probable cause necessary for issuance of a search warrant may be based on information and belief of the informant if the affidavit discloses the nature and source of the information.² It is not essential that the name and identity of the informant be given to the issuing magistrate because such information is immaterial to any issue to be decided.³ But generally any reliable person is a sufficient source of information, shown in the affidavit, to justify issuance of a search warrant.⁴

Officers to
whom directed

If the magistrate is satisfied of the existence of the grounds of the application, or that there is probable grounds to believe their existence, he shall issue a search warrant, signed by him, directed to

¹Waggener, op. cit.

²Elliott v. State, 148 Tenn. 414, 256 S.W. 431.

³Gallimore v. State, 173 Tenn. 178, 116 S.W. 2d. 1001.

⁴Ibid.

the sheriff, any constable, or any peace officer commanding him forthwith to search the person or place named for the property specified and to bring it before the magistrate.¹

Three copies of
warrant to be made

All magistrates, clerks of courts, judges and any other person or persons who-soever issuing search warrants shall prepare an original and two (2) copies of same, one (1) of which shall be kept by him as a part of his official records, and one (1) of which shall be left with the person or persons on whom said warrant is served. The original search warrant shall be served and returned as provided by law. The person or persons as afore-said who issue said warrant shall endorse the warrant, showing the hour, date and the name of the officer to whom the warrant was delivered for execution, and the exact copy of such a warrant and the endorsement thereon, shall be admissible in evidence in the courts. Failure to comply with this section shall make any search conducted under said warrant an illegal search and seizure.²

By whom executed

The search warrant may be executed by any one of the officers to whom it is directed, but by no other

¹Section 40-505, Tennessee Code Annotated.

²Ibid., Section 40-518.

person, except in aid of such officer, at his request, he being present and acting in its execution.¹

Manner of execution To execute the warrant, the officer may break open any door or window of a house, or any part of a house, or anything therein, if after notice of his authority and purpose, he is refused admittance.² It is not necessary to the validity of a search and seizure that it be made in the presence of the accused; the effect of the warrant is not voided by the accused's absence when the warrant is executed.³ Officers may enter a dwelling forcibly in the daytime to execute a search warrant without first demanding admittance if no person upon whom notice may be served is found in charge of the building to be searched.⁴

A search warrant shall be executed and returned to the magistrate by whom it was issued within five (5) days after its date; after which time, unless executed, it is void; and all search warrants in this state may be executed either in the daytime or in the nighttime.⁵ Returning a search warrant before

¹Section 40-508, Tennessee Code Annotated.

²Ibid., Section 40-509.

³State v. Calvert, 219 Tenn. 534, 410 S.W. 2d. 907.

⁴Collins v. State, 184 Tenn. 356, 199 S.W. 2d. 96.

⁵TCA, Section 40-507.

an official other than the one who issued it does not, of itself, affect the validity of the search or the admissibility of evidence obtained. Failure of the officer to return a search warrant within the five (5) day period prescribed by statute, when the search had been made and conducted within the time, is merely failure to carry out a ministerial duty and does not affect the validity of the warrant's execution by the officer.¹

Description in
affidavit adopted
by warrant, when

The affidavit is not a part of the search warrant and it may not be used to supplement an adequate description of the premises to be searched.² A different rule prevails when the affidavit and the warrant are incorporated in the same instrument. An adequate description in the affidavit will supplement an inadequate description in the warrant when the warrant makes a definite reference to the description in the affidavit.³

Non-fatal defects
in warrants

The following are examples of defects in search warrants that do not render them invalid:

- (1) Where a search warrant is duly executed within five (5) days, the failure of the officer to make the return within

¹ Bowman v. State, 211 Tenn. 38, 362 S.W. 2d 255.

² Minton v. State, 186 Tenn. 541, 212 S.W. 2d. 373.

³ O'Brien v. State, 158 Tenn. 400, 14 S.W. 2d. 51; Hackerman v. State, 189 Tenn. 130.

five (5) days does not affect its validity, inasmuch as the return is a mere ministerial duty.¹

(2) Endorsement on the back of a search warrant of the style and date, for which statutes provide no form, may be disregarded.²

(3) A search warrant giving the name and street number of the defendant, but omitting in its body the name of the city, county or state is sufficient where omissions were covered by the heading of the warrant.³

(4) Constitutional provisions against unreasonable searches and seizures do not apply when the land on which evidence is found is not possessed as part of the curtilage (enclosed space immediately surrounding a dwelling house contained in the same enclosures)⁴ used in daily operation of the premises.⁵

(5) A warrant describing premises to be searched as 2706 "Coward" Street instead of 2706 "Cowart" Street is sufficient where there is no street in the city named "Coward"

¹Bowman, op. cit.

²Collins v. State, 184 Tenn. 356, 199 S.W. 2d. 96.

³Armstrong v. State, 150 Tenn. 416, 265 S.W. 672.

⁴Bouvier, op. cit., vol. 1, page 741.

⁵Chico et al v. State, 217 Tenn. 19, 394 S.W. 2d. 648.

and the affidavit attached to the warrant gives the correct name of the street, the two names being idem sonans.¹ Names are "idem sonans" if the attentive ear finds it difficult to distinguish them when pronounced.²

(6) When the accused denies, under oath, the ownership of the property seized under a search warrant, he will not be permitted to question the validity of the search warrant.³

(7) If a description is similar to "residence of A.H. in the 5th civil district on the south side of the Old Perryville Road about 1 3/4 miles from Lexington Court House; the house is white frame on the south side of the Old Perryville Road," it is valid. Here the test is whether or not this description will enable an officer to locate the place to be searched with reasonable certainty. The officers could, by inquiring, identify the premises described in the warrant.⁴

(8) A search warrant to search particularly described premises is not invalidated by failure to state the name of

¹Seals v. State, 157 Tenn. 538, 11 S.W. 2d. 879.

²College Law Dictionary, page 392.

³Neal v. State, 206 Tenn. 492, 334 S.W. 2d. 371.

⁴Hatchett v. State, 208 Tenn. 399, 346 S.W. 2d. 258.

the owner, although the search warrant for his person would be invalid in the absence of the name.¹

(9) A description in a search warrant which directed travel to a named church and turn left to a named road and describing the house as the first house on right side, being the residence of the defendant, sufficiently describes the location of the property to be searched.²

(10) Lack of probable cause for issuance of a warrant is not a valid defense if the affidavit for the search warrant is regular on its face, showing that there was material evidence before the magistrate to support his action, which is not subject to review unless there was fraud or collusion in the magistrate's action.³

Fatal defects
in warrants

The following are examples of defects in search warrants that render them invalid and the evidence seized inadmissible:

(1) A search warrant issued on an affidavit bearing a later date than that shown on the warrant is void, rendering

¹Seals, op. cit.

²Norton v. State, 207 Tenn. 656, 343 S.W. 2d. 361.

³Solomon v. State, 203 Tenn. 583, 315 S.W. 2d. 99; Owen v. State, 217 Tenn. 544.

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the evidence obtained as a result of the search inadmissible.¹

(2) A search warrant is void where there was no compliance with the statute requiring that warrants bear an endorsement showing the hour, date and name of the officer to whom the warrant was delivered for execution; and that two copies be made of the warrant. The search under the warrant is illegal and the evidence obtained inadmissible.²

(3) A search warrant authorizing the immediate search, for contraband, of the premises at a particular address, including any out house or vehicle found upon or in the premises, does not authorize the search of an automobile parked on the premises but not belonging to persons mentioned in the warrant.³

(4) A search warrant is defective when the affidavit, whether made on information and belief or personal knowledge of the applicant, fails to disclose the nature of the information or the facts on which the knowledge is based.⁴

¹Harvey v. State, 166 Tenn. 227, 60 S.W. 2d. 420.

²Talley v. State, 208 Tenn. 275, 345 S.W. 2d. 37; Evans v. State, 209 Tenn. 453.

³State v. Sircey, 215 Tenn. 1, 383 S.W. 2d. 37.

⁴Jackson v. State, 153 Tenn. 431, 284 S.W. 356.

(5) A search warrant is invalid when it authorizes the search of multiple premises occupied by different persons.¹

(6) A warrant is insufficient if an affidavit presents a charge against the accused of making, handling, or transporting whiskey, not of possessing whiskey, and the warrant directs the officers to search the accused's premises for something described as "said articles." The affidavit did not describe the thing to be searched for.²

Valid search
without warrant

All searches conducted without the authority of a valid search warrant are not held to be unreasonable searches. The following are examples of reasonable searches without justification by search warrant:

(1) An officer making an arrest has the authority to search the person of his prisoner, even against his will, but only as an incident to a lawful arrest. If the arrest is unlawful, the search is also. Moreover, the officer's authority to search and seize is always limited to (a) offensive weapons and tools of escape, and (b) further evidence of guilt of the offense for which the lawful arrest has been made.³

¹Worden v. State, 197 Tenn. 340, 273 S.W. 2d. 139.

²Hampton v. State, 148 Tenn. 155, 252 S.W. 1007.

³Elliott v. State, 173 Tenn. 203, 116 S.W. 2d. 1009.

(2) It is valid to search for property belonging to the accused when it is in possession of a third person who waives his right under the search and seizure laws. Protection extends only to the person in possession.¹

(3) The defendant may waive his rights relative to searches and seizures under the Constitution of Tennessee and the United States, but permission must be granted without coercion.²

(4) When one disclaims interest in the premises or possessions searched or in the articles seized, he cannot question the legality of the search and seizure and there can be no objection to evidence obtained by the search.³

(5) When a wife voluntarily gives property of her husband to officers, she waives his rights and a search warrant is not necessary if they are living a normal life together.⁴

(6) If an officer is not trespassing and the evidence is plainly visible and it is seized, there is no unreasonable search.⁵

¹Clarke v. State, 218 Tenn. 259, 402 S.W. 2d. 863.

²Simmons v. State, 210 Tenn. 443, 360 S.W. 2d 10; Deerfield v. State, 220 Tenn. 546.

³Bowman v. State, 211 Tenn. 38, 362 S.W. 2d. 255.

⁴Lester v. State, 216 Tenn. 615, 393 S.W. 2d. 857.

⁵Sneed v. State, 221 Tenn. 6, 423 S.W. 2d. 857.

(7) Searches made by "code inspectors" for violation of the building, plumbing and fire codes, etc., without a search warrant, as authorized by the U.S. Supreme Court case of Frank v. State of Maryland, 79 S. Ct. Rp. 804, 359 U.S. 360, have been repudiated by the Supreme Court of the United States in the companion cases of Camera v. Municipal Court, 87 S. Ct. Rp. 1727, 387 U.S. 534 and See v. City of Seattle, 87 S. Ct. Rp. 1737, 387 U.S. 541. In these cases the court held such a search, when authorized and conducted without a search warrant, lacks the traditional safeguards which the 4th Amendment, through the 14th Amendment, guarantees and is therefore an illegal search.

Disposition of
property seized

When the property is taken under a search warrant and delivered to the magistrate, he shall, if it was stolen or embezzled, cause it to be delivered to the owner, on satisfactory proof of his title, but if the warrant was issued on the second, third, or fourth ground for the issuance of a search warrant (used as a means of committing a felony; possessed for the purpose of committing a public offense, or delivered to another for concealment; or for any other ground provided by law), he shall retain the property in his possession, subject to the order of the court to which he is required to return the proceedings, or of the court

in which the offense is triable.¹

Restoration of
property to defendant

If it appear that the property (seized) is not the same property described in the warrant, or that there is not probable cause for believing the existence of the ground on which the warrant was issued, the magistrate must direct it to be restored to the person from whom it was taken.² It is elementary, however, that as a general rule an owner of property is not divested of his ownership by larcenous taking. Thus, where property has been wrongfully seized, either without a search warrant, or by virtue of an illegal warrant, the property should be restored to the owner and not to the person from which it was taken.³

Return of papers

The magistrate shall, if the property is not directed to be restored under the provisions of the above paragraph, annex together the search warrant, the return and the affidavits and return them to the court having power to inquire into the offense, in respect to which the search warrant was issued.⁴

¹Section 40-513, Tennessee Code Annotated; see page 111 for basis.

²Ibid., Section 40-515.

³Lawrence v. Mullins, 224 Tenn. 9, 449 S.W. 2d. 224.

⁴TCA, Section 40-516.

PENALTY FOR MISDEMEANORS¹

Every person who is convicted of a misdemeanor, the punishment for which is not otherwise prescribed by a statute of this state, shall be punished by imprisonment in the county jail or workhouse not more than one (1) year, or by fine not exceeding one thousand (\$1,000) dollars, or by both, in the discretion of the court.²

MISDEMEANORS WHEN NO PENALTY PRESCRIBED

When the performance of any act is prohibited by statute, and no penalty, punishment or forfeiture for the violation of such statute is imposed, the doing of such act is a misdemeanor.³

FELONIES AND MISDEMEANORS

Distinguished All violations of law punished by imprisonment in the penitentiary or the infliction of the death penalty, are, and shall be denominated, felonies, and

¹Section 39-105, Tennessee Code Annotated.

²City judges having concurrent jurisdiction with justices of the peace in criminal matters may try and dispose of state misdemeanor violations under the "Small Offense Act," Section 40-408, Tennessee Code Annotated. However, this act limits such jurisdiction to a fine of fifty (\$50.00) dollars and no imprisonment may be inflicted.

³TCA, Section 39-106.

all violations of law punished by fine or imprisonment in the county jail or workhouse, or both, shall be denominated misdemeanors.¹

LIMITATION OF PROSECUTIONS²

Death or life sentences Any person may be prosecuted, tried and punished for any offense punishable with death or by imprisonment in the penitentiary during life at any time after the offense shall have been committed.³

Five years or less in the penitentiary Prosecution for any offense punishable by imprisonment in the penitentiary, when the punishment is expressly limited to five (5) years or less, shall be commenced within two years next after the commission of the offense.⁴

Other felonies Prosecution for any offense punishable by imprisonment in the penitentiary, other than as specified in the two preceding paragraphs shall be commenced within four (4) years next after the commission of the offense.⁵

¹Section 39-103, Tennessee Code Annotated.

²Limitation of Prosecutions is commonly known as the "Statute of Limitations."

³Section 40-201, Tennessee Code Annotated.

⁴Ibid., Section 40-202.

⁵Ibid., Section 40-203.

Misdemeanors All prosecutions for misdemeanors shall be commenced within twelve (12) months next after the offense has been committed, except gaming, which shall be commenced within six (6) months.¹

Concealment or absence from state No period, during which the party charged conceals the fact of the crime, or during which the party charged was not usually and publicly resident within the state, is included in the period of limitation.²

Commencement of prosecution A prosecution is commenced, within the meaning of this chapter by finding an indictment or presentment, the issuing of a warrant, or the binding over the offender.³

¹Section 40-204, Tennessee Code Annotated.

²Ibid., Section 40-205.

³Ibid., Section 40-206.

INDICES TO CRIMINAL OFFENSES FOUND IN THE
TENNESSEE CODE ANNOTATED

The following indices of the Tennessee Code Annotated are divided into misdemeanors and felonies for the convenience of the user. Also, some of the captions to sections of the code have been rearranged to bring out a key word to facilitate research. Some sections are indexed by the name by which they are commonly known. The offenses also are further identified by volume and section number of the code.

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SAMPLE PROCESS

The content of Part Four is the printed forms of various legal process commonly used by municipal courts. They are included merely as suggestions for any official use that may be made of them by the municipal court. These forms were prepared by the legal staff of the City of Knoxville and provided for this guide by Mrs. Hugh Simpson, municipal court clerk, with the approval of the Honorable Earl M. Bradley, judge of the Municipal Court of the City of Knoxville. The author is most grateful to both Mrs. Simpson and Judge Bradley for this contribution.

APPEAL BOND

STATE OF TENNESSEE, COUNTY OF
THE CITY OF

CITY JUDGE'S COURT

KNOW ALL MEN BY THESE PRESENTS, That we

as principal, and _____ as surety
are held and firmly bound unto THE CITY OF _____ (and its successors),
a municipal corporation, organized under the laws of the State of Tennessee,
in the sum of Two Hundred and Fifty Dollars (\$250), well and truly to be paid
to the said CITY OF _____ hereby binding ourselves, our representatives,
successors and assigns.

But this obligation is to be void if the said _____

principal, shall prosecute with effect an appeal heretofore prayed and granted
him (or her) from a judgment rendered against him (or her) by the Judge of
said CITY OF _____ for a fine, penalty and cost for the violation of the
ordinances of said City, as stated in said judgment for \$ _____ rendered
on the _____ day of _____ 19____, said appeal being
prayed and granted to the Circuit Court of _____ County, Tenn., and shall
make his (or her) personal appearance in said Court when the said case shall
be called for trial, and shall not at any time depart said Court, without
leave; but if the said _____
shall make his (or her) appearance before said Court, as herein bound, and
shall prosecute said appeal with effect, and not depart said Court, without
leave, and abide by the judgment thereof, and pay all costs and damages
adjudged against him (or her) incident to said appeal, then this obligation
is to be void; otherwise to remain in full force and effect.

Given under our hands, this _____ day of _____
19____.

REVERSE SIDE OF APPEAL BOND

No. _____

Principal

Surety

APPEAL BOND

Surety

THE CITY OF
VS.

Approved and filed this the _____
day of _____ 19____

City Judge

APPEARANCE BOND BEFORE COURT

Form 57-B

STATE OF TENNESSEE, COUNTY

We, _____, hereby
 bind ourselves to the State of Tennessee in the penal sum of _____
 dollars,
 To be void on condition the said _____, charged
 with _____ shall make
 _____ personal appearance before the Judge of the _____ Court for
 _____ County, at the _____ term,
 19____, of said Court, at the Court House in _____
 to answer said charge, and does not depart the Court without leave.

Witness our hands this _____ day of _____ 19____.

(Seal)_____
(Seal)_____
(Seal)

Approved _____ City Judge.

REVERSE SIDE OF APPEARANCE BOND

No. _____

APPEARANCE BOND

THE STATE
 vs.

Bail Bond \$ _____

 City Judge

Form 57-B

1913-1914

1913-1914

1913-1914

1913-1914

1913-1914

1913-1914

1913-1914

1913-1914

CAPIAS

Form 398-A

CITY OF _____
and
STATE OF TENNESSEE

To the Chief of Police, _____ Tennessee--Greeting:

You are hereby commanded to take the bod _____ of _____
and have _____ before the Judge of our City Court on the _____
day of _____, 19____, at a Court to be held for the City of _____
at the City Court House in _____ on the first Monday
of _____ next, to answer a charge of the City and State
exhibited against _____
by _____, for _____
_____, and have you then and there this
writ.

Witness. _____ Clerk of our said Court, at office in
Tennessee, the first Monday of _____, 19_____.

Clerk City Court

REVERSE SIDE OF CAPIAS

No. _____

CAPIAS

City of _____ and
the State of Tennessee
vs,

Issued the _____ day of _____
19_____.

Clerk City Court

STATE OF TENNESSEE, COUNTY, CITY OF

TO THE CHIEF OF POLICE OF THE CITY OF OR ANY LAWFUL OFFICER
TO EXECUTE AND RETURN

I hereby command you to arrest _____
and bring _____ before me to answer the City of _____ on
a charge of violating an ordinance, or ordinances of the said City, by _____

on or about the _____ day of _____, 19____, at or near _____

said offense having been committed within the corporate limits of the City of _____
contrary to the ordinance or ordinances in such cases made and
provided.

Given under my hand at office this _____ day of _____, 19____.

City Judge of City of _____

REVERSE SIDE OF CITY WARRANT OF ARREST

Name	No. _____	Total
	CITY OF _____	
LIST OF WITNESSES	vs. _____	\$
	Executed as commanded and returned before MUNICIPAL JUDGE City of _____ _____ day of _____, 19____	
	Police Officer, City of _____	

Address	Fine - - - - - \$ _____	
	Costs - - - - - \$ _____	
	Total - - - - - \$ _____	

CERTIFICATION OF DOCUMENT

MUNICIPAL COURT

CITY OF _____

STATE OF TENNESSEE

I, _____, clerk of the Municipal Court
of the City of _____, Tennessee, do hereby certify
that the attached document is a true copy of the original warrant
on file in this office, charging the defendant _____
with the offense of _____ on _____,
_____, 19____.

In testimony whereof, I have hereunto set my hand and
affixed the seal of the said Court this _____ day of
_____, 19____.

Municipal Court Clerk

City of _____, Tennessee

CITATION TO COURT

STATE OF TENNESSEE COUNTY OF _____ CITY OF _____	CITATION NUMBER 05865	Docket Number NAME Last First Middle
In the City Court of _____ Tennessee, the undersigned, being duly sworn, upon his oath deposes and says that: on _____ the _____ day of _____ 19____ at _____ M.; Day of week Date Month Year Time Name _____ Residence _____ Phone: _____ _____ Tennessee _____ City and State Name of Business _____ Address of Business _____ Date of Birth _____ Race _____ Sex _____ Month Day Year Driver's License No. _____ State _____ Type _____ did unlawfully operate a motor vehicle. License No. _____ State _____ Year _____ on _____ _____ Location located in the city, county, and state aforesaid, and did then and there commit the following offense or offenses, all of which are contrary to the ordinance or ordinances in such cases made and provided:		
☐ Speeding _____ m.p.h. in a _____ Mile Zone ☐ Radar ☐ Disregarded Red Light ☐ Reckless Driving By ☐ Disregarded Stop Sign ☐ Following Too Closely ☐ Failure to Yield Right of Way ☐ Violation of Anti-Noise Ordinance ☐ Violation of City Registration ☐ No Driver's License ☐ Other _____ ☐ 10-45 Yes _____ No _____ ☐ Explain _____		
Signature of Arresting Officer _____ Number _____ Given under my hand at office this _____ of _____ 19____ Date Month Year _____ Municipal Judge, City of _____ I hereby affix my signature with the understanding that such is not a plea of guilt, but to certify that I have received a summons copy of this warrant and agree to appear at the Municipal Court on _____ day of _____, 19____ at _____ M Date Month Year Time Signature _____		
To be made in triplicate with original going to the offender, one copy to the court and one copy to the Department of Motor Vehicles.		

STATE OF TENNESSEE, COUNTY

To the Sheriff or Jailor of Said County:

_____ having been examined
before me on a charge of _____

and it appearing that such offense has been committed, and that there is sufficient cause to be-
lieve _____ guilty thereof, and _____ having failed to
give bail as required—you are therefore commanded to receive _____ into
your custody and detain _____ until legally discharged.

Given under my hand and seal, the _____ day of _____ 19 _____.

Municipal Judge

REVERSE SIDE OF MITTIMUS

No. _____

MITTIMUS TO JAIL

THE STATE

vs.

Bail Bond - - - - \$ _____

Municipal Judge

MITTIMUS

(350)

MITTIMUS

STATE OF TENNESSEE, MAYOR AND COUNCILMEN OF
TO THE CHIEF OF POLICE OR ANY POLICEMAN OF SAID CORPORATION:

You are hereby commanded to take _____ who has been
 examined before me on the charge of _____
 and found guilty and fined \$ _____ plus \$ _____ costs, total _____ DOLLARS
 and having failed to pay or secure the same, as required by the Ordinances of the Mayor and Councilmen of
 and deliver _____ to the keeper of the Work House thereof, there to be detained
 at labor not longer than three months until the same is paid, his fine suspended by the Municipal Judge or _____
 _____ be otherwise legally discharged.

Given under my hand _____ 19 ____

 Municipal Judge

REVERSE SIDE OF MITTIMUS**MITTIMUS**

MAYOR AND COUNCILMEN
of

vs.

 Issued _____, 19 ____

To The Keeper of the Work House:

Cost and Fine \$ _____

**(Do not hold this prisoner longer than
 3 months in this case.)**

SCIRE FACIAS

STATE OF TENNESSEE, COUNTY
CITY OF

TO THE CHIEF OF POLICE, TENNESSEE:

You are hereby commanded in the name of the City and State to notify

and
that a conditional judgment was rendered against
in the City Court of for the sum of
Dollars, \$ and cost on a
and the
same will be made final unless you appear at of said Court
and show cause to the contrary.

Witness Clerk of our said Court, at office in
Tennessee.

This, 19. Cond. Forfeiture

Clerk City Court

REVERSE SIDE OF SCIRE FACIAS

No.

SCIRE FACIAS

The State of Tennessee and

City of

vs.

Issued the day of

, 19

Clerk City Court

SEARCH WARRANT

STATE OF TENNESSEE)
)
COUNTY OF) (TO ANY LAWFUL OFFICER OF SAID CITY AND COUNTY)
)
CITY OF)

WHEREAS, proof and complaint on oath and in writing supported by affidavit has this day been made before me, the undersigned _____,
Judge of the City of _____ Tennessee, by _____,

(Affiant)
that affiant has reason to believe that _____ is _____
(SUSPECT)

(State illegal activity and contraband sought)

and that said _____ and contraband is located at _____

(SUSPECT)

(Describe the property and list street, name, and number)
in the City of _____ County, Tennessee:
(SEE ATTACHED PHOTOGRAPH WHICH IS INCORPORATED BY REFERENCE AND MADE A PART
HEREOF)
and that there is now being kept on said property described above, certain

(Describe contraband or evidence sought)
which is being kept, possessed and used in violation of the laws of the State of Tennessee. That the facts tending to establish the probable cause of affiant believing that such facts exist are as follows:
(SEE ATTACHED EXHIBIT A. (Affiant's Affidavit) WHICH IS HEREBY EXPRESSLY INCORPORATED BY REFERENCE AND MADE A PART HEREOF)
And it appears to the Court and Court is satisfied that Affiant is a reputable citizen of the City of _____, _____ County, Tennessee, and that the facts set forth in said affidavit show and constitute probable cause for the issuance of this warrant and the court being satisfied of the existence of said grounds as set forth in said application or that there is probable cause to believe in their existence. NOW, THEREFORE, YOU, OR, EITHER OF YOU, ARE HEREBY COMMANDED to make search of the premises of _____ in the _____ located at _____ in the _____

(Describe the property and list the street, name, and number)

City of _____ County, Tennessee, and the buildings or premises
 appurtenant thereto, for _____

(Describe items being illegally Possessed)

and if you find said illegal contraband described hereinabove in his possession, or at said location, you will arrest offender and bring him along with the evidence obtained before me, so that he may be treated as the law directs. This Search Warrant is issued under my hand and seal at _____ County, Tennessee, and it is delivered at the same time to _____, and officer _____ authorized to execute this warrant.

Municipal Judge of the City of

This _____ day of _____, 197_____, at _____ A.M.
P.M.

No. _____

STATE SEARCH WARRANT

THE STATE OF TENNESSEE

V S.

issued the _____

day of _____, 19____

Municipal Judge

Came to hand same day issued.
Executed by searching the premises
described as commanded. The fol-
lowing property taken pursuant to
warrant:

This _____ day of _____,
19____._____
Police Officer, City of

AFFIDAVIT FOR SEARCH WARRANT

STATE OF TENNESSEE)
)
 COUNTY OF)
)
 CITY OF)

_____, affiant, being duly sworn upon oath, personally appeared before me, _____, Municipal Judge of the City of _____, Tennessee, and stated that based upon his knowledge, information and belief and the following facts and underlying circumstances outlined hereinafter, that there is probable cause for believing that _____

(SUSPECT)

has in his possession or under his control _____

(Here describe in detail the illegal

activity complained of and contraband or evidence sought)

and that said _____ is located at _____

(SUSPECT)

(Describe the property

and list the street, name and number)

in the City of _____, Tennessee, and that the said _____

(SUSPECT)

is _____

(Illegal activity complained of)

in violation of the laws of the State of Tennessee, and of the ordinances of the City of _____, Tennessee.

The affiant states that he is a police officer of the City of _____, Tennessee, and that he has been assigned to investigate crime and enforce the Criminal Statutes of the State of Tennessee; that he has been an officer of the City of _____ since 19_____, and that during this time he has conducted numerous criminal investigations. As a result of these investigations, certain information has been supplied to him. That he knows _____

(SUSPECT)

and is presently conducting an investigation into the _____

(State illegal activity

complained of)

activities of _____ . That _____

(SUSPECT)

(SUSPECT)

has a criminal record as follows: _____

(Here, state in detail subject's criminal

record, giving month, date, and year and the type of law violation.)

The affiant states that his affidavit as outlined herein is also made upon the following additional information listed below:

INFORMATION: _____

(Here, state in detail the facts and underlying circumstances relied

upon which show probable cause for issuance of search warrant, including date

information was obtained or violation seen and the date said information was

given to officer.)

If additional space needed, attach page 2-A hereto

Affiant verily believes that said information is true because same was furnished to him by a confidential informant, who affiant is personally acquainted with and who affiant and other police officers of the city of _____ known to affiant, have used in the past on _____ occasion(s). Affiant verily believes that said informant is honest and has given him the above information in good faith and that informant is reliable because informant has given him information in the past on _____ occasion(s) and that affiant has found said information given to him by informant in the past to be accurate and correct; that _____ number of arrest(s) and _____ number of convictions were obtained from information given affiant by said confidential informant. As a result of said information, affiant prays that a search warrant issue authorizing affiant or some other officer to enter and search the premises described hereinabove.

AFFIANT

Sworn and subscribed to before me
this _____ day of _____, 19____.

Municipal Judge of the City of

STATE WARRANT

(295)

State of Tennessee,

County, City of

PERSONALLY came before me,

, Municipal Judge of and for the City of

Tenn., the undersigned, who, being duly sworn, states that on _____
 in the County and State aforesaid, and within the corporate limits of the City of _____ Tenn., the offense of

_____ has been committed and charges _____ thereof,
 and therefore he prays a warrant of arrest.

Sworn and subscribed before me this _____

Municipal Judge of

Tenn.

State of Tennessee,
 City of

County

Municipal Court Clerk of

Tenn.

To Any Lawful Officer of the City of

—Greetings:

The foregoing affidavit having been made before me that the offense of _____

_____ has been committed within the corporate limits of said city. You are therefore commanded in the name of the State
 and the City of _____ Tenn., forthwith to arrest and bring before me, _____, the undersigned

Municipal Judge of said City, the accused, the said _____

_____ to answer the above charge and be dealt with as the law and ordinances direct.

Issued this _____

Municipal Judge

Municipal Court Clerk.

SUBPOENA: You are further commanded to summon the following witnesses to personally be and appear
 at my office, in the CITY COURT, and testify in behalf of the City of _____ Tennessee,
 _____ at 9:00 o'clock, A. M.

No. 1 _____ Address _____

No. 2 _____ Address _____

No. 3 _____ Address _____

No. 4 _____ Address _____

No. 5 _____ Address _____

No. 6 _____ Address _____

No. 7 _____ Address _____

REVERSE SIDE OF STATE WARRANT**DRUNKOMETER TEST**

Percent

Test By Officer

Date

PLEA

I,.....the undersigned, do hereby expressly waive presentment, indictment, grand jury investigation and trial by jury and request the Court that this case shall be determined on its merits.

This the..... day of....., 19.....

No.

THE STATE OF TENNESSEE

vs.

Came to hand same day issued. Executed by arresting Defendant and setting case for trial before

Municipal Judge

on..... at 9 o'clock, A. M.

Policeman

Detective

Also executed the within subpoenas as full except as to Witness No. and No. and No., the same not found after diligent search.

This

Policeman

Detective

CONTINUED BY

State—Def't to 9:00 A. M.

State—Def't to 1:30 P. M.

State—Def't to 9:00 A. M.

State—Def't to 1:30 P. M.

THE STATE

vs.

It appearing from testimony in the case that there is probable cause to believe the Defendant guilty of the offense of which he stands charged, it is adjudged that he be held to answer at the next term of Criminal Court of County, Tenn. The offense being bailable, the amount of such bail is fixed at

\$

This

Municipal Judge

THE STATE

vs.

Defendant having plead guilty and submitted under the small offense law, it is ordered that he pay a fine of \$ and all costs and on failure to pay or secure the same he be confined in the Workhouse of County until he works out the same in the manner prescribed by law.

This

Municipal Judge

THE STATE

vs.

In this case, after hearing all the evidence, both on behalf of the State and Defendant, I find the Defendant not guilty.

This

Municipal Judge

Paroled to

Municipal Judge

Copy of Subpoena

(400)

Tenn., ...19

.....

.....

You are hereby summoned to appear before the Judge of the City Court at
on the.....day of.....19

at.....o'clock, to testify in a case pending in said Court wherein the
City of is Plaintiff and.....

.....

Defendant, on behalf of the.....and
this you shall not omit under the lawful penalty.

.....
JUDGE

Served this..... day of....., by.....

POLICEMAN

REVERSE SIDE OF SUBPOENA

*Failure to appear and answer this subpoena
shall be held as a contempt of court and
punishable as such.*

*A capias will be issued for the arrest of
any witness failing to appear on the date
required.*

FRONT

Account No. _____		
DRIVER LICENSE¹ USED IN LIEU OF BAIL		
Name: _____	Date: _____	
Address: _____		
Type License Surrendered:	License Number:	Traffic Ticket No.
Date of Birth: _____	This License EXPIRES on DATE OF TRIAL: _____	
☐ License Surrendered in lieu of bail.		☐ License Received in lieu of bail.
_____ Signature of Licensee		_____ Signature of City Judge, City Court Clerk or Officer
3rd Copy - Retained by Court		TDS-DL-28 App. Dec. 72

BACK



Date Driver License and 1st copy of this form sent to Department of Safety _____
Date case disposed of _____
Date 2nd copy of this form sent to Department of Safety _____
_____ Name of Court
_____ Name of City

¹This form and the following (T.D.S. DL-28) forms shown in this guide are included merely as samples and are not to be used or duplicated for use without the prior approval of the Department of Safety, State of Tennessee.

FRONT

Account No.		
To: Driver Control Department of Safety Nashville, Tennessee 37219		REINSTATE AND RETURN Driver License To This Person
Name:		Date:
Address:		
Type License Surrendered:	License Number:	Traffic Ticket No.
Date of Birth:	This License EXPIRES ON DATE OF TRIAL:	
☐ License Surrendered in lieu of bail.	☐ License Received in lieu of bail.	
Signature of Licensee		Signature of City Judge, City Court Clerk or Officer
2nd Copy - To Department of Safety upon disposition of case.		TDS-DL-28 App. Dec. 72

BACK



To: Driver Control Department of Safety Nashville, Tennessee 37219	
Reinstate and Return Driver License to this Person.	
Docket Number _____	Name of Court _____
Disposition of Case _____	Name of City _____
Date of Disposition _____	
Signature of City Judge or City Court Clerk	

FRONT

Account No.		NOTICE TO CANCEL DRIVER LICENSE	
To: Driver Control		Subject Failed to Appear in	
Department of Safety		Court	
Nashville, Tennessee 37219			
Name:		Date:	
Address:			
Type License	License	Traffic	
Surrendered:	Number:	Ticket No.	
Date of Birth:	This License EXPIRES on DATE OF TRIAL:		
☐ License Surrendered in lieu of bail.	☐ License Received in lieu of bail.		
Signature of Licensee		Signature of City Judge, City Court Clerk or Officer	
1st Copy - To Department of Safety with Driver License Attached.		TDS-DL-28 App. Dec. 72	

BACK



To: Driver Control	
Department of Safety	
Nashville, Tennessee 37219	
☐ Cancel the attached license for failure to appear in City Court pursuant to Section 59-730 T.C.A.	
Date _____	Name of Court _____
	Name of City _____
Signature of City Judge or City Court Clerk _____	

FRONT

Account No.			OFFICIAL		
RECEIPT FOR DRIVER LICENSE AND SUBSTITUTE DRIVER LICENSE					
Name:			Date:		
Address:					
Type License		License		Traffic	
Surrendered:		Number:		Ticket No.	
Date of Birth:			This License EXPIRES on DATE OF TRIAL:		
☐ License Surrendered in lieu of bail.			☐ License Received in lieu of bail.		
Signature of Licensee			Signature of City Judge, City Court Clerk or Officer		
Original - To Licensee			TDS-DL-28 App. Dec. 72		

BACK



Notice To Licensee!

"This is your substitute driver license. Your original license is held in lieu of bail pursuant to 59-730 T.C.A. and City Ordinance No. _____. This license expires on the date set for your court appearance. If you fail to appear your license will be sent by this Court to the Department of Safety for cancellation."

You cannot get a license until this case is properly disposed of.

Name of Court

Name of City

SAMPLE IMPLEMENTING ORDINANCE¹

Ordinance No. _____

An ordinance to authorize the use of a driver's license in lieu of bail in certain traffic cases.

Be it enacted (ordained) by the City of _____
(This ordaining clause should conform to any requirements in the city's charter):

Section 1. Pursuant to section 59-730, Tennessee Code Annotated, whenever any person lawfully possessed of a chauffeur's or operator's license theretofore issued to him by the Department of Safety, State of Tennessee, is issued a citation or arrested and charged with a violation of any municipal ordinance regulating traffic, except driving under the influence of an intoxicant or narcotic drug or leaving the scene of an accident, said person shall have the option of depositing his chauffeur's or operator's license with the officer or court demanding bail in lieu of any other security required for his appearance in the city court in answer to any such charge before said court.

¹Don W. Ownby, Consultant, Ordinance Codification, Municipal Technical Advisory Service, The University of Tennessee.

This ordinance is offered as a sample only. Any implementing ordinance must have approval by the Department of Safety, State of Tennessee, before adoption.

Section 2. All city officers and employees shall comply fully with the requirements of section 59-730, Tennessee Code Annotated, and any implementing orders of the Department of Safety, State of Tennessee.

Section 3. This ordinance shall be effective from and after its final passage, the public welfare requiring it. (This section should conform to any city charter requirements.)