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Requirements of Fingerprint Law

by Rex Barton
MTAS Police Management Consultant

The Fingerprint Law was originally passed in the 1997 legislative session. The original law mandated that local law enforcement agencies:

1. Fingerprint every person arrested and forward the fingerprint cards to the Tennessee Bureau of Investigation (TBI).

2. Maintain at least an 85 percent retention rate. (This means that the TBI should not reject more than 15 percent of the fingerprint cards due to poor quality.)

The law also requires an annual audit to determine if each agency is in compliance. If an agency is not in compliance, the comptroller’s office is to notify the police chief or sheriff to show cause as to why the law enforcement agency should not be found noncompliant. If the law officers do not do so, the Tennessee POST Commission is to revoke their certification. Additionally, the law contains provisions for removing the police chief or sheriff from office. This last provision is a moot point for police chiefs since they cannot continue to be a police officer if they are decertified.

The penalties for noncompliance were postponed until July 1, 1999. The remainder of the bill became effective on July 1, 1998.

In a separate but related law, the 1997 Legislature required police departments to set aside 20 percent of the revenues for their drug fund for the purchase of automated fingerprint equipment, also known as “live scan.” A 1998 amendment allowed departments that have purchased the automated equipment, or have a fingerprinting agreement with an agency that purchased the equipment, to use up to 20 percent of their drug fund revenues for the ongoing operational costs of the equipment, such as dedicated phone lines, supplies, maintenance, and maintenance agreements.

In many counties, the sheriffs’ departments and the municipal police departments have joined to obtain grants for the purchase of the automated fingerprint machines. In other instances, the sheriff has bought the machine on his or her own. If the police department enters into an agreement to use the machine, the department can use up to 20 percent of the drug fund revenues to pay its share of the maintenance costs.

In several Tennessee counties, the sheriff has traditionally fingerprinted every prisoner brought to the facility by city police departments. According to the standards established by Tennessee Code Annotated (T.C.A.) 8-4-115, city police chiefs must have a written agreement for the
sheriff to perform this function. Otherwise, the police chief could be penalized for noncompliance with the Fingerprint Law even though the sheriff is actually taking the fingerprints. Some sheriffs are requiring annual payments for performing the fingerprint service.

Automated fingerprint equipment should improve the quality of fingerprint submissions, and it is certainly easier than obtaining inked fingerprints manually. However, there is not a mandate that any department must buy or use the automated fingerprint equipment, and there isn’t an established deadline for converting from manual submissions to automated submissions.

The following information lists some guidelines for what city police departments should do to ensure compliance with the new law.

If the city and county have jointly purchased an automated machine:

• The city can have its own personnel fingerprint prisoners on the jointly owned machine; or

• The city can enter into an agreement with the sheriff for the sheriff to fingerprint all prisoners. Such an agreement should specify that the sheriff will comply with the requirements of T.C.A. 8-4-115.

If the sheriff has purchased an automated machine:

• The city should pursue an agreement for the sheriff to fingerprint all prisoners. Such an agreement should specify that the sheriff will comply with the requirements of T.C.A. 8-4-115. The city should be prepared to pay reasonable costs. These costs should be confined to a proportional share of the annual costs of running the machine, in relation to the percentage of prisoners brought to the jail by the city police department.

If there is no automated machine in the county:

• The city and county should pursue a joint grant to obtain the machine; or

• The city can still enter into an agreement for the sheriff’s department to fingerprint prisoners using manual methods. Such an agreement should specify that the sheriff will comply with the requirements of T.C.A. 8-4-115.

When all else fails:

The department could do its own fingerprinting using the old-fashioned inked method.

For more information about the Fingerprint Law, contact Rex Barton, MTAS police management consultant, (423) 974-0411, or call the MTAS municipal management consultant in your area.
MODEL FINGERPRINTING AGREEMENT
Sample No. 1

WHEREAS, it is the desire of the______________ County Sheriff's Department and the City of______________ Police Department to jointly utilize automated fingerprint equipment ("live scan" fingerprint equipment) and to share proportionately the expense for the utilization and maintenance of this equipment,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

1. This agreement shall be effective on ________, 1999, and shall terminate ________, 2001. The term may be extended by mutual agreement.

2. The City of ________________ Police Department shall reimburse the ________________ County Sheriff's Department $_______________ within (____) days upon the execution of this agreement. This figure represents ___% of the purchase price.

(The above section would be applicable when the City and County jointly purchase automated fingerprint equipment.)

3. The City of ________________ Police Department shall pay the ________________ County Sheriff's Department a yearly maintenance fee in the amount of $_______. The first installment of said maintenance fee shall be made on or before ________.

   or

The City of ________________ Police Department shall pay the ________________ County Sheriff's Department a fee of $_______________ per prisoner booked into the ________________ County Jail. The county will not fingerprint or charge a fee for any prisoner charged with a second or subsequent charge of Public Intoxication when the arresting officer verifies that the prisoner was previously fingerprinted for that charge.
4. In the event the equipment is substantially damaged and the cost to repair exceeds $__________, the parties shall bear equally the cost of said repair. In the event one party does not wish to pay its share for the cost of repair, then it forfeits its right for further use of the equipment, and the contract is hereby terminated.

5. The City of __________ Police Department will provide all information and forms required for the booking process for all prisoners arrested by the City of __________ Police Department. The __________ County Sheriff’s Department personnel will fingerprint all prisoners as required by T.C.A. 38-3-122 and T.C.A. 8-4-115, and

The __________ County Sheriff’s Department will submit the required fingerprint cards to the Tennessee Bureau of Investigation.

or

The City of __________ Police Department will be responsible for submitting the completed fingerprint cards to the Tennessee Bureau of Investigation.

The __________ County Sheriff’s Department will complete the R-84 disposition card at the time of booking and forward to the __________ Police Department. The __________ Police Department will be responsible for obtaining the final disposition of the case and forwarding the completed R-84 card to the TBI.

_________________________   CITY MANAGER

_________________________   COUNTY EXECUTIVE

_________________________   SHERIFF

Note: Any section could be deleted when it is not applicable to City and County.
MODEL FINGERPRINTING AGREEMENT
Sample No. 2

WHEREAS, it is the desire of the ___________ County Sheriff’s Department and
the City of ___________ Police Department to enter into an agreement for the
___________ County Sheriff’s Department to fingerprint all persons arrested by
the City of ___________ Police Department,

NOW, THEREFORE, THE PARTIES AGREE AS FOLLOWS:

The City of ___________ Police Department will provide all information and
forms required for the booking process for all prisoners arrested by the City of ___________
Police Department. The ___________ County Sheriff’s Department personnel will
fingerprint all prisoners as required by T.C.A. 38-3-122 and T.C.A. 8-4-115, and

the ___________ County Sheriff’s Department will submit the required
fingerprint cards to the Tennessee Bureau of Investigation.

or

the City of ___________ Police Department will be responsible for submitting the
completed fingerprint cards to the Tennessee Bureau of Investigation.

The ___________ County Sheriff’s Department will complete the R-84
disposition card at the time of booking and forward to the ___________ Police
Department. The ___________ Police Department will be responsible for
obtaining the final disposition of the case and forwarding the completed R-84 card to the
TBI.

__________________________          __________________________
DATE                                 CITY MANAGER/MAYOR

__________________________          __________________________
DATE                                 COUNTY EXECUTIVE

__________________________          __________________________
DATE                                 SHERIFF
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