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MARK GWYN
Director

Memorandum

To: Tennessee Sex Offender Registering Agencies

Date: July 13, 2009

From: Jason Locke, Assistant Special Agent in Charge
Criminal Intelligence Unit / Sex Offender Registry

RE: **Work Release and Trusty Status of Sex Offenders**

The TBI Sex Offender Registry Unit has received recent calls regarding work release for convicted sex offenders. These calls include questions about court ordered work release for the offender, as well as questions as to a convicted sex offender who is re-incarcerated on a non-sex offense (such as burglary) being allowed to have work release.

The laws are clear that offenders convicted of a sexual offense or violent sexual offense may not be placed on work release or trusty status. These laws are posted on both the public web site and the web site for law enforcement. I have included them in this memorandum for your convenience.

Tennessee Code Annotated:

40-35-213. Eligibility for work release program.

(a) Notwithstanding any other law to the contrary, no person convicted of a sexual offense or violent sexual offense as defined in § 40-39-202, whether in the custody or control of the department of correction, a local government or a private prison contractor, shall be eligible for any work release program offered by or that may be offered by the correctional facility in which the offender is housed.

(b) As used in subsection (a), "work release program" includes any assignment to a work crew in which a prisoner is permitted to go out into the community, whether supervised or unsupervised, but does not include a work assignment to TRICOR or any TRICOR facility.

40-35-315. Jurisdiction of sentencing court to order work release.

(a) In any case in which a defendant has been sentenced to a local jail or workhouse or is at a local jail or workhouse subject to the provisions of § 40-35-212, and the administrative authority of the institution has not formulated a program for work release, the sentencing court shall have jurisdiction to order work release as a part of a sentence, either at the time of sentencing or as a



part of any subsequent sentence modification, upon conditions to be set by the sentencing court. This section shall apply to convictions under § 55-10-401 after the mandatory minimum sentences have been served.

(b) Notwithstanding subsection (a), the sentencing court shall not be authorized to order work release as part of the sentence of a person convicted of a sexual offense or violent sexual offense as defined in § 40-39-202. As used in this subsection (b), "work release" includes any assignment to a work crew in which a prisoner is permitted to go out into the community, whether supervised or unsupervised, but does not include a work assignment to TRICOR or any TRICOR facility.

41-51-104. Prohibition against trusty status for sexual offenders.

(a) No person who has been convicted of an offense that will require the person to register as a sexual offender pursuant to the provisions of title 40, chapter 39, part 2, and who is being housed in a county or municipal jail or workhouse, shall be eligible for, nor shall such person be placed on, trusty status.

(b) The provisions of subsection (a) are applicable regardless of whether the person is:

(1) Sentenced to the department of correction but is serving the sentence in a county or municipal jail or workhouse pursuant to contract or is sentenced to confinement in a county or municipal jail or workhouse; or

(2) Sentenced to the department of correction but is being housed in a county or municipal jail or workhouse while awaiting transfer to the department.

Any jurisdiction receiving a court order contrary to the work release and trusty laws listed above should discuss this contradiction with the local district attorney general and/or the court system.

Feel free to call the Sex Offender Registry Hotline at 1-888-837-4170 with any questions.

JTL: jl

Cc: Jeff Puckett, Deputy Director, TBI
Jerri Powell, Special Agent in Charge, Tennessee Fusion Center

