

## **BASIC CONSTITUTIONAL RIGHTS IF YOU ARE ARRESTED OR ACCUSED OF A CRIME \***

**Right to Remain Silent.** On June 1, 2010, the U.S. Supreme Court in the case of *Berghuis v. Thompkins*, 560 U.S. 2250 (2010), changed this right significantly. The police now only have to advise you of your right to remain silent. They are no longer required to obtain a written waiver of your right to remain silent and may continue to interrogate or question you for as long as they wish and any statements or comments you make may be used against you in court. **THE POLICE ARE NO LONGER REQUIRED TO HAVE YOU WAIVE YOUR RIGHT TO REMAIN SILENT.**

To protect your constitutional right to remain silent or stop questioning by police, you now **MUST** invoke your right to remain silent or clearly tell the police you are refusing to answer any questions and want to remain silent, which is your absolute constitutional right to do. Once you invoke your right to remain silent, you cannot be compelled by anyone, including the police, to answer any questions or give any information against yourself and all questioning by the police must end. However, if you again start talking to the police or volunteer information, you could waive your right to remain silent even if it was not your intention to do so.

**Right to an Attorney.** You have a right to consult an Attorney and to be represented by an Attorney at all stages of the legal proceedings. If you cannot afford an attorney, the Court may appoint an attorney to represent you after making a finding that you are indigent.

**Presumed Not Guilty of Offense.** Under the law you are presumed innocent of any charges against you and the burden is upon the State to prove your guilt beyond a reasonable doubt.

**Right to Confront and Cross Examine.** You have a right to confront your accusers or those witnesses against you in open court and have your attorney cross examine them to test their credibility and believability.

**Right to Subpoena.** You have the right to subpoena witnesses and to use the power of the Court to compel their attendance, if necessary.

**Right against Unlawful Search and Seizure.** You have the right to have your attorney challenge the legality and propriety of any search and seizure and to have any evidence suppressed that was illegally obtained or seized by the police or other law enforcement.

**Right to Trial by Jury.** A person accused of a crime, has a right to a trial by jury. A jury of twelve citizens is empaneled to hear the

evidence against you and to determine whether you are guilty or not guilty. The State bears the burden of proving your guilt beyond a reasonable doubt. You are under no burden to prove your innocence and whether you testify or not is your decision. No one can force you to testify at your trial.

*\*Disclaimer: The order in which the previous rights were presented have no reflection on their particular importance and they should all be viewed together in light of the circumstances of each particular case. In addition, this list is not all inclusive and there may be additional rights and protections afforded an accused under both the Tennessee State and U.S. Constitutions.*

## **OVERVIEW OF THE TENNESSEE STATE LEGAL SYSTEM IN CRIMINAL PROSECUTIONS \***

**Legal Proceedings Begin by Arrest or Filing of a Charging Instrument.** Legal proceedings may be started by the filing of a criminal summons, arrest warrant, presentment or indictment.

**Criminal Summons or Criminal Citation.** Except for minor traffic offenses, a criminal summons or citation is a criminal charge just the same as if you had been arrested by the police and taken to jail. A criminal summons or citation is simply a promise by the accused to appear in court on his or her court date and to appear for booking, if necessary. Failure to appear on a criminal summons or criminal citation may result in the issuance of a warrant for arrest.

**Criminal Arrest Warrant.** A criminal arrest warrant is an order to arrest the accused issued by a judge or magistrate upon the sworn affidavit of a police officer or other person (such as a merchant charging someone with shoplifting). The arrest warrant directs that the accused be incarcerated pending a hearing, but may allow the accused to be released upon the posting of a bond in an amount sufficient to guarantee the defendant's appearance in court.

**Arraignment in General Sessions Court.** The arraignment in General Sessions Court is usually the first court appearance, or appearance before a judge or magistrate that may be held at the jail if an accused is unable to post bond. The primary purpose of the arraignment is to advise the accused of his or her charges and to inquire whether the accused understands his or her constitutional rights. Any application for appointed counsel by indigent defendants is usually made at this stage of the proceedings.

**Right to Preliminary Hearing in General Sessions Court.** Persons charged in Criminal arrest warrants and summons for those offenses carrying possible jail time have the right to a preliminary hearing. A preliminary hearing is not a trial, but rather a hearing to determine whether there is enough evidence to establish probable cause to continue the prosecution and bind the case over to the Grand Jury for the consideration of an indictment and further proceedings in the Criminal Court.

**Indictment.** An indictment is a formal accusation by the Grand Jury, which is composed of randomly selected citizens of the county or other jurisdiction where the legal proceedings have been brought.

**Presentment.** A presentment is similar to an indictment, except that the prosecution is initiated in the Grand Jury and the first court appearance of the accused is usually in Criminal Court rather than General Sessions Court.

**Arraignment in Criminal Court.** The arraignment in Criminal Court is similar to the arraignment in General Sessions Court, however, this stage of the proceedings is usually more formal with the Defendant being called upon to enter a plea of either guilty, not guilty or reserving the entry of a plea to a later date. The Court may set various time limits upon the filing and hearing of motions, petitions, pleas and other matters appropriate to the circumstances of the case. The Court may also set a date for a jury trial.

**Hearing of Motions, Petitions and other matters.** Depending upon the circumstances of the case, the State and/or Defense may file various motions and petitions for the Court to hear and rule upon. The Court may set hearing dates as necessary and the Defendant has a right to be present at all stages of the trial proceedings.

**Trial by Jury.** As previously stated under the Constitutional Rights section, a Defendant has a right to trial by jury and the State bears the burden of proving the Defendant's guilt beyond a reasonable doubt. The Defendant may offer such proof as he or she, with the advice and assistance of Counsel, deems necessary and appropriate, however, the Defendant is not required to prove his or her innocence.

**Right to Appeal any Conviction.** The Defendant has an absolute right to appeal any conviction based upon a jury verdict or trial by judge and any sentence imposed to the State Court of Criminal Appeals. In the event that the Court of Appeals should rule against the Defendant, he or she may make an application for permission to appeal to the State Supreme Court and may, in some circumstances, even appeal to the Supreme Court of the United States.

*\* Disclaimer: We wish to make clear that we have not addressed sealed indictments, presentments or other various special legal process and procedures that may be used in certain circumstances and have only provided a general overview of the Tennessee State Legal System. This overview of the Tennessee State Legal System is offered to assist those persons accused of various criminal offenses in order to help them understand the process by which cases move through the State legal system; however, this list is not all inclusive and cannot substitute for the professional assistance, advice and judgment of an Attorney. Persons are encouraged and admonished to seek legal assistance from an attorney of their choosing or from the public defender if indigent.*

## **RANGE OF PUNISHMENT FOR VARIOUS COMMON OFFENSES**

### **Theft Offenses (including shoplifting):**

Class A Misdemeanor thefts (\$1,000 or less), up to 11 months and 29 days incarceration.

Class E Felony thefts (greater than \$1,000, but less than \$2,500), a range of 1 to 6 years incarceration. \*

Class D Felony thefts (greater than \$2,500, but less than \$10,000), a range of 2 to 12 years incarceration. \*

Class C Felony thefts (greater than \$10,000, but less than \$60,000), a range of 3 to 15 years incarceration. \*

Class B Felony thefts (greater than \$60,000), a range of 8 to 30 years incarceration. \* Source: T.C.A. § 39-14-105.

### **Domestic Assault:**

This offense is generally a class A misdemeanor carrying possible punishment of up to 11 months and 29 days incarceration. \* In certain circumstances this type of offense may be considered a class C felony with possible punishment of 3-15 years incarceration. \* Another important consideration with this offense is that under federal law a person convicted of domestic assault may never again be able to purchase or possess a firearm of any kind.

Source: T.C.A. §§ 39-13-111, 39-13-102 & 40-14-101 et. seq.

### **Assault:**

This offense is generally a class A misdemeanor carrying possible punishment of up to 11 months and 29 days incarceration. \*

Source: T.C.A. § 39-13-101.

### **Aggravated Assault:**

With certain exceptions, this offense is generally a class C felony carrying a possible punishment of 3 to 15 years incarceration. \*

Source: T.C.A. § 39-13-102

### **Burglary & Aggravated Burglary:**

Depending upon the particular circumstances of the case, Burglary may be either a class E or class D felony, carrying ranges of punishment of 1 to 6 years and 2 to 12 years, respectively, of incarceration. \*

Aggravated Burglary is a class C felony, carrying a range of punishment of 3 to 15 years incarceration. \*

Source: T.C.A. §§ 39-14-402 & 39-14-403.

### **Driving Under the Influence (DUI):**

This offense is generally a class A misdemeanor carrying possible punishment up to 11 months and 29 days incarceration; however, DUI is different from most misdemeanor offenses in that it carries minimum mandatory incarceration and fines. \*\* The highlights of those minimum mandatory punishments if convicted are:

#### **DUI, First Offense:**

Not less than 48 hours nor more than 11 months and 29 days incarceration and 24 hours of litter pickup. In addition, there is a

minimum mandatory fine of not less than \$350 nor more than \$1,500 and loss of drivers license for 1 year. For offenses where the alcohol concentration is twenty hundredth of one percent (.20%) or more, the minimum mandatory jail time is 7 consecutive days in jail rather than the 48 hour minimum jail sentence.

#### **DUI, Second Offense:**

Not less than 45 days nor more than 11 months and 29 days incarceration and a fine of not less than \$600 nor more than \$3,500 and loss of drivers license for 2 years. Vehicle is also subject to seizure and forfeiture for second and subsequent offenses.

#### **DUI, Third Offense:**

Not less than 120 days nor more than 11 months and 29 days incarceration and a fine of not less than \$1,100 nor more than \$10,000 and loss of drivers license from not less than 3 years nor more than 10 years. Vehicle is subject to seizure and forfeiture for second and subsequent offenses.

#### **DUI, Fourth and Subsequent Offenses:**

Class E Felony, with not less than 150 days, nor more than the maximum punishment authorized for the appropriate range of a class E felony, i.e., 1 to 6 years incarceration, which is based on prior record, and a fine of not less than \$3,000 nor more than \$15,000 and loss of drivers license for 5 years. Vehicle is also subject to seizure and forfeiture for second and subsequent offenses. Source: T.C.A. § 55-10-401 et. seq.

\* The number of years within a particular range of punishment is based upon prior criminal conduct and certain enhancement factors, which are determined by the Court at the time of sentencing. The consideration of probation is also a matter for the court to determine based upon the seriousness of the offense and the prior criminal record of the accused and any enhancement factors.

\*\* DUI offenses also generally have a requirement that you must enter and complete DUI or a type of Driving School and additional requirements may also be imposed by the Court.

*Disclaimer: This pamphlet only lists certain selected offenses, which is not all inclusive, and only highlights the possible range of punishments for those offenses. See the Tennessee Code Annotated (T.C.A.) for more information. If any information in this pamphlet is in disagreement with any statute contained in the T.C.A., then any such information should be disregarded as the T.C.A. is controlling and should be followed. Please note: various factors, such as prior criminal record, may be considered by the Court when imposing sentence. Nothing in this pamphlet should be construed as the giving of legal advice. Persons are encouraged and admonished to seek legal assistance and advice from a licensed attorney of their choosing or from the public defender if indigent.*

## **YOUR BASIC CONSTITUTIONAL RIGHTS AND AN OVERVIEW OF THE LEGAL PROCESS IN TENNESSEE STATE CRIMINAL CASES**



CLIENT SATISFACTION

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