

**RULES
OF
THE TENNESSEE DEPARTMENT OF CORRECTIONS
DIVISION OF COUNTY PROGRAMS**

**CHAPTER 0420-2-1
COUNTY CORRECTIONS INCENTIVE PROGRAM**

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0420-2-1-.01 PREFACE.

- (1) Under the authority of T.C.A. §41-8-108, the Department of Correction is required to establish rules for the general administration of the County Corrections Incentive Program.
- (2) For the purposes of this program all definitions as stated in T.C.A. §41-8-103, apply.
- (3) The Department of Correction hopes that by carrying out the responsibilities of the County Corrections Incentive Act, T.C.A. §41-8-101, et. seq., both state and county governments will mutually benefit by:
 - (a) helping to alleviate overcrowding in state correctional facilities; and
 - (b) assisting counties in upgrading local correctional facilities and programs.

Authority: T.C.A. §§41-8-102, 41-8-103 and 41-8-108. **Administrative History.** Original rule filed February 19, 1975; effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 19, 1984; effective January 14, 1985. Repeal and new rule filed November 5, 1986, effective February 28, 1987.

0420-2-1-.02 APPLICATION PROCEDURES.

- (1) Participation by any county in the per diem subsidy programs is voluntary.
- (2) Counties with jails certified by the Tennessee Corrections Institute under current standards need not make formal application to participate in that program.
- (3) On an annual basis non-certified counties must submit an Application for Participation. To qualify for subsidies within a contract year, application must be made within the first 6 months of that year.
- (4) The Department of Correction will forward proposed contracts and blank applications to all non-certified counties in anticipation of each fiscal year.
- (5) Each non-certified county seeking participation will submit with the proposed contract a completed application, including at minimum the following information:

(Rule 0420-2-1-.02, continued)

- (a) An itemization of the improvements to be made in the facility. Such improvements may be to the physical plant, to correctional staffing, or to correctional programming and should include those recommended in the most recent report of the jail inspection division. Improvements approved in one contract period cannot be funded again in subsequent years.
- (b) Signatures both of the Sheriff or of the Workhouse Superintendent, as applicable, and of the County Executive.

Authority. T.C.A. §§41-8-104, 41-8-105 and 41-8-108. **Administrative History:** Original rule filed February 19, 1975, effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 19, 1984; effective January 14, 1985. Repeal and new rule filed November 5, 1986, effective February 28, 1987.

0420-2-1-.03 APPROVAL AND AMENDING OF APPLICATIONS.

- (1) Upon receipt of the application, the Commissioner of Correction will either approve or disapprove the county for participation pursuant to evaluation of the improvements to be made. Should the application not be approved, the Commissioner will notify the County Executive and Sheriff/Superintendent of the reason(s) for disapproval. The county may submit a new application within 60 days of such disapproval. Any approved application becomes Attachment A to the contract between the applicant county and the Department of Correction.
- (2) Attachment A may be amended at any time during the contract year by submission of forms for that purpose. Amendments, like applications, must be signed by the County Executive and Sheriff/Superintendent and approved by the Commissioner.

Authority. T.C.A. §§41-8-104, 41-8-105 and 41-8-108. **Administrative History:** Original rule filed February 19, 1975, effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 19, 1984; effective January 14, 1985. Repeal and new rule filed November 5, 1986, effective February 28, 1987.

0420-2-1-04 CONTRACT PROCEDURES.

- (1) Certified counties will not be required to contract with the Department in order to receive per diem reimbursement under the County Corrections Incentive Act.
- (2) The Commissioner will enter into contracts with non-certified counties approved through the application process.
 - (a) The term of the contract shall not be greater than one year.
 - (b) Contract provisions shall include, at minimum:
 1. The date it becomes effective
 2. The per diem rates applicable for detainee and prisoner days
 3. The maximum dollar amount for which the state is liable under the term of the contract
 4. The county's commitment to engage in certain improvements to the jail, as stated in the Application for Participation

(Rule 0420-2-1-.05, continued)

5. The county's commitment to expend *all* funds received under the contract only on county correctional programming, facilities or staff, and/or to establish a dedicated reserve account for specific future jail construction
6. The county's commitment to provide to the Commissioner quarterly financial reports on incentive program receipts and expenditures
7. Other standard contract language as required by state regulation.

Authority: §§T.C.A. 41-8-104 and 41-8-108. **Administrative History:** Original rule filed February 19, 1975; effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 9, 1984; effective January 14, 1985. Repeal and new rule filed November 5, 1986, effective February 28, 1987.

0420-2-1-.05 COMPENSATION.

- (1) All funds for the program will be dispersed from the State Prosecution Fund by the Office of the State Comptroller. The county shall submit to the Judicial Cost Accountant claims for the subsidies provided by the contract. The claim must be filed within ninety (90) days following the end of the month in which the prisoners were held. Upon certification by the Judicial Cost Accountant of the validity of the claim, the county shall be compensated as provided by the contract.
- (2) All claims for subsidies filed with the Judicial Cost Accountant shall include the following:
 - (a) Prisoner's Name
 - (b) Jail Docket Numbers
 - (c) Offense
 - (d) Circuit or Criminal Court Case Number
 - (e) Original Commitment Date
 - (f) Indictment Date
 - (g) Dates of Confinement
 - (h) Judgment Dates
 - (i) Terms of Judgment
 - (j) Release Date
 - (k) Terms of Release
 - (l) Such other information as may be necessary to ascertain the subsidy due for individual prisoners.
- (3) Claims not filed within the limits provided for by T.C.A. §41-8-106 (c), shall not be payable.
- (4) Claims for subsidies filed with the Judicial Cost Accountant shall be signed by the Sheriff or Superintendent and by the Circuit or Criminal Court Clerk with the Clerk's seal attached.
- (5) For the purpose of this program, state prisoners shall be defined in the following manner.

(Rule 0420-2-1-.05, continued)

- (a) State Prisoner - A state prisoner is a prisoner for which the state is responsible for the costs of prosecution as defined by T.C.A. §40-25-131. A subsidy day paid for the board of a state prisoner falls under one of two classifications as defined by Tennessee Code Annotated, chapter 8 of Title 41.
1. "Detainee Day" refers to each day each state prisoner was held by a county prior to judgment, which shall include acquittal, or prior to delivery to the Department of Correction during a designated contract period.
 2. "Prisoner Day" refers to each day each state prisoner was held by a county pursuant to T.C.A. §40-23-104 or 40-35-311. "Prisoner Day" also refers to each day each state prisoner sentenced to the Department of Correction was held by a county after the first five (5) days of incarceration following sentencing, during a designated contract period, provided that said prisoner's transport to the Department of Correction was delayed pursuant to Section 19 of the Comprehensive Correction Improvement Act of 1985 and/or pursuant to the order of a federal court.
- (b) If a state prisoner enters a plea of guilty to a felony charge which is accepted by a court or is tried by a court and found guilty of a felony offense and is sentenced to serve the sentence locally pursuant to T.C.A. §40-23-104 or 40-35-311, the prisoner is changed from the "detainee" classification to the "prisoner" classification the day following the date of sentencing to the local facility.
- (c) Billing for the subsidy for a state prisoner classified as "detainee" shall begin in the month in which the prisoner is indicted on the felony charge. At that time the county shall bill for the days prior to the indictment during which the prisoner was incarcerated on the indicted charge.
- (d) Guilty to a Misdemeanor Offense - A state prisoner entering a plea of guilty to a misdemeanor offense which is accepted by a court or a state prisoner tried by a court and found guilty of a misdemeanor offense shall become a county prisoner the day following the court's acceptance of the guilty plea or the day following the misdemeanor conviction. A subsidy shall not be payable by the state for a prisoner serving a sentence as a result of a misdemeanor conviction.
- (e) Parole or Probation - A state prisoner who has been released on parole or probation shall not become a state prisoner again as a result of a misdemeanor conviction unless said prisoner shall also be charged with violation of the terms of the parole or probation and a revocation hearing shall have been held regarding said charge. This does not prevent a state prisoner on parole or probation from being incarcerated and classified as a state prisoner as a result of an additional felony indictment subsequent to the prisoner's release on parole or probation. Billing for the subsidy for a prisoner on parole or probation shall not begin until the month in which the revocation hearing is held. The subsidy for a state prisoner held on parole or probation violation shall begin with the first day of the prisoner's incarceration pursuant to the charge of parole or probation violation. Subsidy for a state prisoner held on parole or probation violation shall be at the "detainee" rate until the revocation hearing. If parole or probation is revoked, with a resulting felony term to be continued or begun, subsidy shall be paid after the revocation at the prisoner rate for each day the prisoner is held subsequent to T.C.A. §40-23-104 or 40-35-311, or for each day the transport of a prisoner sentenced to Tennessee Department of Correction is delayed (after 5) pursuant to Section 19 of the Community Correctional Improvements Act of 1985 and/or pursuant to the order of a federal court.
- (f) Return from Department of Correction. - The subsidy for a state prisoner returned to a local jail from custody of the Department of Correction for a postconviction proceeding, or as a witness, or for other proceeding, shall be at the "detainee" rate for the county. The subsidy for such a state prisoner shall begin with the date the prisoner is received and be payable through the date the prisoner is returned to the Department of Correction.

(Rule 0420-2-1-.05, continued)

- (g) Non-Consecutive Days - The subsidy for a state prisoner serving non-consecutive days shall be payable as for other state prisoners provided the billing for the subsidy shall indicate the actual days served. A subsidy shall not be payable for a state prisoner serving non-consecutive days for the days that the prisoner is not incarcerated.
- (h) Work Release - The subsidy for a state prisoner on work release shall be as follows:
 - 1. The full subsidy shall be payable for those days on which the prisoner does not leave the workhouse or jail.
 - 2. The subsidy for the days on which the state prisoner leaves the jail for occupational purposes shall be equivalent to the difference between the "detainee" rate and the "prisoner" rate for the county.
- (i) Release for Scholastic, Medical or Other Purposes - The full subsidy shall be payable for those days on which a state prisoner leaves the workhouse or jail for scholastic, medical, or other purposes, provided, however, that no subsidy will be due for those days that the prisoner does not return to the jail for a minimum of 8 hours during a twenty-four hour period.
- (j) Hospitalization - A subsidy shall not be payable for those whole days during which a state prisoner is confined in a hospital and the state is liable for the expenses of the hospitalization under provisions of T.C.A. §41-4-115 (b). The subsidy for a prisoner hospitalized shall end with the day the prisoner is transferred to the hospital and start again with the day the prisoner returns from the hospital.
- (k) Transfer Between Local Facilities - When a state prisoner is transferred between two facilities each of which is eligible for the subsidy and the transfer occurs on the same date, the facility releasing the prisoner shall be entitled to charge for the date the facility releases the prisoner. The facility receiving said prisoner shall not begin charging for the prisoner until the day following the date the prisoner is received.
- (l) Pending Transfer to the Department of Correction - A subsidy shall be payable for a state prisoner sentenced in one county and held in another county pending transfer to the Department of Correction at the rate applicable according to definitions provided above.

Authority: T.C.A. §§40-23-104, 40-25-131, 40-35-311, 41-8-106, 41-4-131, 41-4-132, 41-4-133, 41-4-139.
Administrative History: Original rule filed February 19, 1975; effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 19, 1984; effective January 14, 1983. Repeal and new rule filed November 5, 1986; effective February 28, 1987.

0420-2-1-.06 USE OF INCENTIVE SUBSIDY BY COUNTIES.

- (1) Regardless of the certification status of a county's correctional facility, all incentive funds received must be dedicated exclusively for use in the county's correctional program.
- (2) No more than twenty-five percent (25%) of funds received for service provided in non-certified jails may be used to pay for current corrections operating expenses. Seventy-five percent (75%) shall be used to fund those improvements included in the Application for Participation.
- (3) County appropriations in support of corrections in non-certified counties may not be diminished to the extent of any subsidy received under the incentive program; in no case shall county fiscal support for the

(Rule 0420-2-1-.06, continued)

jail be diminished below that provided in the county's budget for that year immediately preceding the first year of program participation.

Authority: T.C.A. §41-8-107. **Administrative History:** Original rule filed February 19, 1975; effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 19, 1984; effective January 14, 1985. Repeal and new rule filed November 5, 1986; effective February 28, 1987.

0420-2-1-.07 ACCOUNTING PROCEDURES.

- (1) Each participating county shall maintain documents for all charges against the State and all expenditures made with County Corrections Incentive funds. The books, records, and documents of the participating county insofar as they relate to the money received or expenditures made in regard to the program must be maintained for a minimum of three years following the end of the contract year.
- (2) All books, records, and documents of the participating county insofar as they relate to the County Corrections Incentive Program shall be subject to audit at any reasonable time and upon reasonable notice by the Department of Correction, the Comptroller of the Treasury, or their duly appointed representatives. The records shall be maintained in accordance with generally accepted accounting principles and at no less than those recommended in the Accounting Manual for recipients of grant funds in Tennessee, published by the Comptroller of the Treasury, State of Tennessee.
- (3) Each participating county, regardless of the certification status of its correctional facility, shall submit to the Commissioner a report regarding income and expenditures related to incentive funds on a quarterly basis.
 - (a) Quarterly reports must be submitted no later than the fifteenth day of October, January, April and July.
 - (b) The report shall include the following:
 1. The amount of incentive funds received during the quarter
 2. The amount of any expenditures made with incentive funds during the quarter
 - (i) non-certified counties must itemize and document those expenditures
 - (ii) certified counties will report the total amount of incentive funds spent in the correctional program over the time period
 3. The amount of funds placed in a dedicated reserve account for jail construction/renovation and the total accumulated amount in that account
 4. The amount to be carried forward into the next quarter
 5. Signatures of the person completing the report, along with signature of the County Executive certifying the correctness of the report.
 - (c) Non-certified counties must submit, in addition to four quarterly reports, a final report by December 31 following the close of the contract year. This report will account for receipts and expenditures of incentive funds which follow the fourth quarterly report. The final report should indicate a zero (0), with all funds having been expended or accounted for in the reserve account.

(Rule 0420-2-1-.07, continued)

- (d) Failure to submit financial reports shall result in the withholding of any monies claimed or due. Such failure may also result in termination of a present contract and will be considered in the assessment of any future contract applications.

Authority: T.C.A. §41-8-108. **Administrative History:** Original rule filed February 19, 1975; effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 19, 1984; effective January 14, 1985. Repeal and new rule filed November 5, 1986; effective February 28, 1987.

0420-2-1-.08 TERMINATION OF COUNTY PARTICIPATION.

- (1) Any county may voluntarily withdraw from the program at any time by providing written notice to the Commissioner, signed by the County Executive and the Sheriff/Superintendent
- (2) It shall be the responsibility of the Department to determine:
 - (a) Whether the county has complied with all laws and regulations applicable to the program.
 - (b) Whether the county is fulfilling its contract obligations, including those addressed in the Application for Participation.

Should the Commissioner determine that a county has not met its contract obligations, has not used program funds in accordance with law or regulation, or has violated any other provision of law or regulation applicable to the program, he may terminate that county's participation. Such termination will be executed by means of written notice to the County Executive and the Sheriff/Superintendent.

Authority: T. C.A. §41-8-108. **Administrative History:** Original rule filed February 19, 1975; effective March 21, 1975. Repeal by chapter 913 of the Public Acts of 1980; effective May 2, 1980. New rule filed October 19, 1984; effective January 14, 1985. Repeal and new rule filed November 5, 1986; effective February 28, 1987.

0420-2-1-.09 PREFACE.

- (1) The Department of Correction is required to establish rules for the general administration of the County Corrections Incentive Act.
- (2) For the purposes of this program, all definitions as stated in Tennessee Code Annotated, Section 41-8-103 apply.
- (3) The State Funding Board is authorized to make grants or loans, as funds are available, to any approved applicant county to assist such county in the construction or renovation of a correctional facility.

Authority: T.C.A. §§41-8-103, 41-8-108 and 41-8-109. **Administrative History:** Original rule filed April 21, 1987; effective July 29, 1987.

0420-2-1-.10 GRANT APPLICATION PROCEDURES

- (1) Any county participating in the County Corrections Incentive Program may apply for a grant.
- (2) The application submitted by a county shall conform to a format provided by the Department of Correction and shall include the following information:

(Rule 0420-2-1-.10, continued)

- (a) The amount of requested funding and the total cost of the proposed project.
- (b) The certification status of existing county correctional facilities as established by the Tennessee Corrections Institute.
- (c) The total rated inmate capacity of the county's present facilities and of the proposed new and/or expanded facility.
- (d) The average daily inmate population of present facilities, by facility, over the last calendar year, broken out by number of pre-trial detainees, sentenced misdemeanants, sentenced felons.
- (e) The total number of felons sentenced to the Department of Correction from that county over the last calendar year.
- (f) The percentage of the proposed new bedspace which will be dedicated to the housing of convicted felons. (Such percentage must be at least equal to the percentage of the project proposed to be supported by State funding.)
- (g) A detailed description of the project, including a copy of blueprints and the name and address of the architectural or engineering firm retained to design the project.
- (h) Anticipated project beginning and completion dates.
- (i) A description of programs which the county plans for state inmates and the percentage of that population anticipated to be involved in those programs.
- (j) A description of programs the county presently has or intends to implement to provide alternatives to the incarceration of non-violent felons.
- (k) A proposal regarding the types of state prisoners with regard to offense committed and sentences imposed that the county will commit to housing in the new facility.
- (l) A certification that the planned project will meet Tennessee Corrections Institute and American Correctional Association standards applicable to jails.
- (m) A management proposal for the facility, i.e., a statement regarding what entity will be responsible for daily operational management of the facility.
- (n) If it is not the county's intention to commit in perpetuity the above proposed percentage of new bedspace to state inmates, a statement of its alternative proposal.
- (o) If reimbursement for state inmates committed to the new facility is to be sought at a rate other than that established under Tennessee Code Annotated, Section 41-8-106, a statement of the per diem to be sought and documentation for the basis of that per diem. (Reimbursements may not be sought in excess of reasonable allowable cost, as determined by the Comptroller of the Treasury.)

Authority: T.C.A. §§41-8-105, 41-8-108 and 41-8-111. **Administrative History:** Original rule filed April 21, 1987; effective July 29, 1987.

0420-2-1-.11 REVIEW OF GRANT APPLICATIONS.

- (1) No county's application will be considered unless all required information is provided.

(Rule 0420-2-1-.11, continued)

- (2) All applications will be reviewed by the Department of Correction and ranked as necessary.
- (3) No proposal will be approved unless it clearly appears to offer a more cost-effective alternative to adding State facilities over a reasonable period of time.
- (4) Should the ranking of applications be necessary, such ranking will be based upon the Department's estimation of:
 - (a) the project's relative impact upon the State's capacity to incarcerate felon offenders, and construction and operation.
- (5) The Department of Correction will submit to the State Funding Board all eligible proposals, approved by the Commissioner and rank ordered as necessary.
- (6) At the same time, the Department will submit those proposals to the Legislative Select Oversight Committee for its review.

Authority: T.C.A. §§41-8-105 and 41-8-108. **Administrative History:** Original rule filed April 21, 1987; effective July 29, 1987.

0420-2-1-.12 CONTRACT TERMS FOR GRANTS.

- (1) The State Funding Board shall enter into contracts with those counties selected for grants as funds are available.
- (2) No county shall award any construction contract in reliance on a grant until such time as the Building Commission has approved plans pursuant to Tennessee Code Annotated, Section 4-15-102, and the State Funding Board and county have executed a contract pursuant to Tennessee Code Annotated, Section 4-15-102, when a grant proposal has been approved.
- (3) Provisions of the contract shall include:
 - (a) An agreement by the State to fund a certain amount, up to 100%, of the actual cost of the approved project.
 - (b) An agreement by the county to reserve a certain percentage of new cell space for state prisoners, the percentage being at least equal to the percentage of State funding. Such agreement is in perpetuity unless otherwise provided for through the repayment of grant funds.
 - (c) An agreement regarding the types of state prisoners to be housed in the new or expanded facility, with regard to offenses committed and sentences imposed. The county must agree to house all felons sentenced to six years or less, space available, and may agree to house others if necessary to keep all reserved beds filled.
 - (d) An agreement to complete all construction in accordance with American Correctional Association and Tennessee Corrections Institute standards and to operate and maintain the project in accordance with those standards.
 - (e) An agreement by the county to repay grant funds received should it breach or withdraw from the contract.
 - (f) An agreement that pursuant to an order of the sentencing judge, state inmates who cannot be controlled in the county facility may be transferred to the Department of Correction.

(Rule 0420-2-1-.12, continued)

- (g) An agreement by the county that in all its contracts dealing with construction of the project, it will require compliance with the prevailing wage rates as provided in Tennessee Code Annotated, Section 12-4-401, et. seq. and it shall require surety bonds in accordance with Title 12, Chapter 4, Part 2 of Tennessee Annotated.
- (h) An agreement by the county to proceed expeditiously with and complete the project.
- (i) An agreement by the county to comply with all rules, regulations and procedural guidelines established by the State for the administration of the grant program and with all State statutes applicable to the program.
- (j) An agreement by the county to submit progress and status reports as required by the State.
- (k) An agreement as to the amount the State will pay the county for housing state prisoners in the new cell space. This amount may be up to the "reasonable allowable cost" as determined by the Comptroller of the Treasury and the Commissioner of Finance and Administration.
- (l) An agreement as to the entity that will manage the new cell space.
- (m) If applicable, an agreement as to the implementation of Tennessee Code Annotated, Section 41-8-111(4).

Authority: T.C.A. §§41-8-108 and 41-8-111. **Administrative History:** Original rule filed April 21, 1987; effective July 29, 1987.

0420-2-1-.13 PAYMENT OF GRANT FUNDS TO SELECTED COUNTIES.

- (1) The grant shall be paid to the county in three (3) installments. The first such payment shall be made within thirty (30) days after the contract has been fully executed. The amount of such payment shall be that which the parties agree is necessary to initiate architectural services, but shall not exceed one-tenth (1/10) of the total grant awarded. The second payment shall be made during the progress of the construction at approximately the mid-point of completion of the project as certified by the project architect. The amount of this payment may be agreed to by the parties, but not be a greater portion of the total grant amount than that portion of the project certified as having been completed. The remainder of the grant shall be paid following the completion of the construction as certified by the project architect's certificate of completion and a certification from the County Executive that the project has been completed. Prior to the final payment, the county will submit to the State proper documentation, which will include the actual invoice or a copy thereof, and evidence that the county has paid the contractor or vendor.

Authority: T.C.A. §§41-8-108, 49-8-109, and 41-8-111. **Administrative History:** Original rule filed April 21, 1987; effective July 29, 1987.

0420-2-1-.14 COUNTY'S FAILURE TO COMPLY WITH GRANT REGULATIONS.

In the event any county having entered into a grant contract pursuant to the County Corrections Incentive Program shall fail to comply with the rules, regulations and procedural guidelines established by the Department of Correction and the State Funding Board for the administration of the grant program and with all State statutes applicable to the grant program, the following sanctions shall be employed:

- (1) The Commissioner shall deliver by certified mail a written notice to the county of the failure to comply.

(Rule 0420-2-1-.14, continued)

- (2) In the event that such county shall fail to comply within sixty (60) days of the receipt of such notice, the Commissioner shall withhold any grant funds still due the county under the contract and may deliver by certified mail a written notice to the county to remit those grant funds already awarded under the contract.
- (3) In the event that such county shall fail to remit the amount set forth in such notice within sixty (60) days of the receipt of such notice, the Commissioner shall notify the Commissioner of Finance and Administration and request that a part of any State shared taxes apportioned to such county be withheld until the full grant amount awarded has been remitted.

Authority: T.C.A. §41-8-108. **Administrative History:** Original rule filed April 21, 1987; effective July 29, 1987.