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# Emergency or Public Necessity Rule(s) Filing Form

*Emergency and Public Necessity rules are effective from date of filing for a period of up to 165 days.*

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<b>Division:</b>	Administrative Services
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**Rule Type :**

- Emergency Rule  
 Public Necessity Rule

**Revision Type (check all that apply):**

- Amendment  
 New  
 Repeal

**Statement of Necessity:**

Submitted herewith are proposed rules of the Tennessee Department of Correction for promulgation under the public necessity provision of the Uniform Administrative Procedures Act. The Commissioner has adopted these rules pursuant to Tenn. Code Ann. § 4-5-209(a)(4), which authorizes an agency to adopt public necessity rules when “[t]he agency is required by an enactment of the general assembly to implement rules within a prescribed period of time which precludes utilization of rulemaking procedures described elsewhere in this chapter for the promulgation of permanent rules.”

Public Chapter 1179 of the Acts of 2008 amended the Tennessee Public Records Act, Tenn. Code Ann. §§ 10-7-503, et seq. (Public Records Act). Section 6 of Public Chapter 1179 establishes the Office of Open Records Counsel (“OORC”) and requires that the OORC, among other things, “shall establish a schedule or reasonable charges which a records custodian may use as a guideline to charge a citizen requesting copies of public records pursuant to Title 10, Chapter 7, Part 5. Section 1 of Public Chapter 1179 amends Tenn. Code Ann. § 10-7-503 to provide that, while the OORC is developing such a schedule, a records custodian may require a requestor to pay the records custodian’s actual costs in producing requested public records. However, when such Schedule of Reasonable Charges is developed, then this provision will no longer be applicable and the provisions of section (a)(7)(C)(1) shall become effective. That section provides that “records custodian may require a requestor to pay the custodian’s reasonable costs incurred in producing the requested material and to assess such reasonable costs in the manner established by the office of open records counsel pursuant to § 8-4-604.”

The Office of Open Records Counsel has now developed a Schedule of Reasonable Charges for Copies of Public Records. The Schedule of Reasonable Charges specifically states that “[i]f a records custodian determines to charge for copies or duplication of public records, such determination and schedule of charges must be pursuant to a properly adopted rule and evidence by a written policy authorized by the governmental entity’s governing authority.” The Schedule also states that “[a] records custodian may reduce or waive, in

whole or in part, any charge only in accordance with the governmental entity's property adopted written policy." The Schedule further states that "[t]he development date of the Schedule of Reasonable Charges is October 1, 2008, and notification of the development will be given to the Tennessee Code Commission on October 31, 2008." The instructions regarding the Schedule of Reasonable Charges prepared by the OORC for records custodians specifically states that "[a]ll governmental entities must comply with T.C.A. Section 10-7-506(a) in order to charge for copies or duplication of public records requested pursuant to the Tennessee Public Records Act. Accordingly, the Department has promulgated this public necessity rule in order to meet the deadlines mandated by the General Assembly in Public Chapter 1179 and to comply with the requirements of Tenn. Code Ann. § 10-7-506(a) and the Schedule of Reasonable Charges developed by the Office of Open Records Counsel. Without the adoption of the public necessity rule, the Department is faced with a period of time after October 31, 2008, during which it will be unable to charge any fee for copies of public records. The Department's inability to charge any fee for copies of public records defeats one of the primary purposes of the amendments to the Public Records Act to reaffirm the authority of agencies to charge fees for copies of public records and to standardize those fees through the development of the Schedule of Reasonable Charges by the Office of Open Records Counsel.

For a copy of this public necessity rule contact: Debra K. Inglis, General Counsel, Tennessee Department of Correction, 6th Floor, Rachel Jackson Building, 320 6th Avenue North, Nashville, TN 37243-0465, telephone (615) 741-1000, ext. 8147.

**Rule(s) Revised** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables.)

<b>Chapter Number</b>	<b>Chapter Title</b>
0420-01-02	Release of Inmate Records Information
<b>Rule Number</b>	<b>Rule Title</b>
0420-01-02-.05	Processing of Request for Inmate Information

<b>Chapter Number</b>	<b>Chapter Title</b>
0420-01-03	Charges for Producing Copies of Public Records
<b>Rule Number</b>	<b>Rule Title</b>
0420-01-03-.01	Purpose
0420-01-03-.02	Definitions
0420-01-03-.03	Production Costs
0420-01-03-.04	Copying Costs
0420-01-03-.05	Labor Costs
0420-01-03-.06	Delivery Costs
0420-01-03-.07	Payment of Production Costs
0420-01-03-.08	Waiver of Production Costs
0420-01-03-.09	Requests for Copies Following Inspection

## Amendments

Rule 0420-01-02--05 Processing of Request for Inmate Information is amended by deleting the current language in its entirety and substituting the following language so that as amended the rule shall read:

0420-01-02-.05 PROCESSING OF REQUEST FOR INMATE INFORMATION. The manager of the Department's operational support services section, or a designee, will be responsible for gathering and initially reviewing the requested inmate information and will respond directly to information requests originating from members of correctional, law enforcement, judicial or social services agencies. The public information officer shall respond to all other requests for inmate information after obtaining the desired information from the operational support services manager/designee. Charges for copies of records shall be assessed in accordance with Rule 0420-1-3 Charges for Producing Copies of Public Records.

## New Rules

### Rules of The Tennessee Department of Correction Administrative Services Division

#### Chapter 0420-1-3 Charges for Producing Copies of Public Records

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0420-01-03-.01 Purpose	0420-01-33-.05 Delivery Costs
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0420-01-03-.04 Labor Costs	0420-01-03-.08 Requests for Copies Following Inspection

0420-01-03-.01 Purpose. Following the publication of the Schedule of Reasonable Charges for Copies of Public Records developed by the Office of Open Records Counsel pursuant to Tenn. Code Ann. § 8-4-604(a), these Rules are promulgated for the purpose of establishing and implementing charges for producing copies of public records of the Tennessee Department of Correction. Other statutory provisions, such as Tenn. Code Ann. § 10-7-506(c), describe charges that may be assessed when specific records are requested for a specific use.

Authority: T.C.A. §§ 4-3-603; 4-3-606; 10-7-506(a).

0420-01-03-.02 Production Costs. The Department shall charge the requesting party for production costs based upon the most current version of the Schedule of Reasonable Charges issued by the Office of Open Records Counsel, available at <http://www.comptroller.state.tn.us/openrecords/index.htm>.

Authority: Tenn. Code Ann. §§ 4-3-603; 4-3-606; 10-7-506(a).

0420-01-03-.03 Copying Costs. The Department shall charge the requesting party for copying costs based upon the most current version of the Schedule of Reasonable Charges issued by the Office of Open Records Counsel.

Authority: T.C.A. §§ 4-3-603; 4-3-606; 10-7-506(a).

0420-01-03-.04 Labor Costs. The Department shall charge the requesting party for labor costs based upon the most current version of the Schedule of Reasonable Charges issued by the Office of Open Records Counsel.

Authority: T.C.A. §§ 4-3-603; 4-3-606; 10-7-506(a).

0420-01-03-.05 Delivery Costs. The Department shall charge the requesting party for the costs incurred by the Department in delivering the records to the requesting party, in addition to any other charge permitted by these Rules.

- (1) Delivery of copies of public records to the requesting party shall be by hand delivery when the requesting party returns to the custodian's office to retrieve the requested records. If the requesting party chooses not to return to the custodian's office to retrieve the copies, the Department shall deliver records to the requesting party through the United States Postal Service, and the cost incurred in delivering the copies may be assessed in addition to any other permitted charge.
- (2) In the discretion of the Department, copies of public records may be delivered through other means, including electronically, and the cost related to such delivery shall be assessed.

Authority: T.C.A. §§ 4-3-603; 4-3-606; 10-7-506(a).

0420-01-03-.06 Payment Of Production Costs. If the requesting party requests copies of public records, the following provisions concerning payment of production costs shall apply:

- (1) The Department shall provide the requesting party an estimate of the production costs before initiating the production of copies of the requested public records.
- (2) The Department shall require payment in full of all production costs before copies of public records are delivered or otherwise made available to the requesting party.
- (3) Production costs must be paid by cash, check, or money order. Cash payments must be for the exact amount of the production costs. Checks must be made payable to The State of Tennessee for the exact amount of the production costs.
- (4) The Department will provide a receipt to the requesting party upon receipt of payment of the production costs.

Authority: §§ 4-3-603; 4-3-606; 10-7-506(a).

0420-01-03-.07 Waiver of Production Costs. Waiver of production costs for copies of public records shall be in accordance with the following provisions:

- (1) The Department shall provide copies of public records without charge if all production costs do not exceed Three Dollars (\$3.00).
- (2) When the requesting party is a federal, state, or local government agency, the Department shall provide the requested copies of public records without charge, unless federal funds are provided to that agency for reimbursing entities providing copies of relevant records. A request made by a federal, state, or local government agency on behalf of a citizen under the Tennessee Public Records Act shall be treated as a request by the citizen and charged accordingly.
- (3) The Department may provide copies of the following records without charge if the Department will not incur significant production costs in providing the records: basic budget information, history of the Department, biographical data for Department employees, general facts and figures about the Department, and similar information.

Authority: T.C.A. §§ 4-3-603; 4-3-606; 10-7-506(a).

0420-01-03-.08 Requests For Copies Following Inspection. The Department shall not assess a charge to inspect public records, unless otherwise required by law. However, if the requesting party, after requesting to inspect public records, requests copies of public records, the Department shall charge the requesting party for all production costs.

Authority: T.C.A. §§ 4-3-603; 4-3-606; 10-7-506(a).