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Sequence Number: 04-17-14
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Notice of Rulemaking Hearing

Hearings will be conducted in the manner prescribed by the Uniform Administrative Procedures Act, T.C.A. § 4-5-204. For questions and copies of the notice, contact the person listed below.

Agency/Board/Commission:	Department of Commerce and Insurance
Division:	Tennessee Corrections Institute
Contact Person:	Joseph Underwood
Address:	500 James Robertson Parkway Davy Crockett Tower, Legal Office Nashville, Tennessee 37243
Phone:	(615) 741-3899
Email:	Joseph.Underwood@tn.gov

Any Individuals with disabilities who wish to participate in these proceedings (to review these filings) and may require aid to facilitate such participation should contact the following at least 10 days prior to the hearing:

ADA Contact:	Don Coleman
Address:	500 James Robertson Parkway Davy Crockett Tower, 12th Floor Nashville, Tennessee 37243
Phone:	(615) 741-6500
Email:	don.coleman@tn.gov

Hearing Location(s) (for additional locations, copy and paste table)

Address 1:	500 James Robertson Parkway		
Address 2:	Davy Crockett Tower, Conference Room 1-B		
City:	Nashville, Tennessee		
Zip:	37243		
Hearing Date :	June 4, 2014		
Hearing Time:	10:00 a.m.	<input checked="" type="checkbox"/> CST/CDT	<input type="checkbox"/> EST/EDT

Additional Hearing Information:

Pursuant to T.C.A. § 41-7-106(i), the Board of Control of the Tennessee Corrections Institute is authorized to adopt and enforce such rules and regulations as may be necessary to carry out the provisions of T.C.A. § 41-4-144, relating to the minimum qualifications required to be a jail administrator, workhouse administrator, jailer, corrections officer, or guard in a county jail or workhouse. Moreover, the Board possesses the authority pursuant to T.C.A. § 41-7-106(f), to establish criteria for determining whether to waive the minimum qualifications required to be a jail administrator, workhouse administrator, jailer, corrections officer, or guard in a county jail or workhouse, as provided in T.C.A. § 41-4-144.

New rules 1400-04-.01 (Submission of Waiver Request) and 1400-04-.02 (Waiver of Pre-Employment Requirements) will mirror the language codified in T.C.A. §§ 41-4-144(9) and 41-7-106(g), resulting from the enactment of Public Chapter 173 of the 2013 Acts and signed by the Governor on April 16, 2013. Public Chapter 173 (2013) adopted applicable provisions of the Americans with Disabilities Act (ADA), 42 United States Code 12101, et seq. into statute. Public Chapter 173 (2013) also provides that the Board of Control may not grant waivers for any person hired as a jail or workhouse administrator, jailer, corrections officer or guard in any county

jail or workhouse who has been dishonorably discharged from the military, has any mental impairment which affects the person's ability to perform any essential function of the job with or without a reasonable accommodation, has a conviction for domestic assault or a felony conviction.

Revision Type (check all that apply):

- Amendment
 New
 Repeal

Rule(s) (ALL chapters and rules contained in filing must be listed. If needed, copy and paste additional tables to accommodate more than one chapter. Please enter only **ONE** Rule Number/Rule Title per row.)

Chapter Number	Chapter Title
1400-04	Criteria for Waivers
Rule Number	Rule Title
1400-04-.01	Submission of Waiver Request
1400-04-.02	Waiver of Pre-Employment Requirements

(Place substance of rules and other info here. Statutory authority must be given for each rule change. For information on formatting rules go to <http://state.tn.us/sos/rules/1360/1360.htm>)

Substance of Proposed Rules

Chapter 1400-04

Criteria for Waivers

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1400-04-.01 Submission of Waiver Request

1400-04-.02 Waivers of Pre-employment Requirements

1400-04-.01 Submission of Waiver Request. A request for waiver of pre-employment requirements must be submitted by the prospective employing agency prior to the employment of the person requiring the waiver. Requests must be submitted no later than thirty (30) days prior to the next scheduled meeting of the Board of Control. Request for waiver filed/submitted by an individual will not be accepted by the Board of Control. The requesting department shall be represented by its designee before the Board of Control. Once a waiver has been granted for a previous pre-employment requirement for a particular employee, that requirement shall be considered waived for future applications for certification.

Authority: T.C.A. §§ 41-4-144 and 41-7-106.

1400-04-.02 Waiver of Pre-employment Requirements. A waiver of pre-employment requirements may be granted under the following circumstances:

- (1) No person may be employed as a jail or workhouse administrator, jailer, corrections officer or guard in any county jail or workhouse, who requires a waiver under this section, until such waiver is granted.
 - (a) Military History - The Board of Control may waive pre-employment requirements relating to the military history on an individual basis and depending on the circumstances.
 1. Waivers may be granted from pre-employment requirements for the following separations from military service:
 - (i) Entry Level Separation;
 - (ii) Uncharacterized Discharge; or,
 - (ii) General Discharge under Honorable Conditions.
 2. Waivers shall not be granted from pre-employment requirements for the following separation from military service:
 - (i) Dishonorable Discharge or Dismissal;
 - (ii) Bad Conduct Discharge; or,
 - (iii) General Discharge under Other Than Honorable Conditions.
 - (b) Criminal Activity - The Board of Control may consider a waiver from pre-employment requirements relating to criminal activity on an individual basis and depending on the circumstances.
 1. Waivers may be granted if the officer has been convicted of or pleaded guilty to or entered a plea of nolo contendere to any misdemeanor charge or misdemeanor violation of any federal or state law or city ordinance (excluding domestic violence) relating to force, violence, theft, dishonesty, gambling, liquor, controlled substances or controlled

substances analogues (as defined in the Tennessee Drug Control Act compiled in Title 39, Chapter 17, Part 4).

2. Waivers shall not be granted if a person has been convicted of, pleaded guilty to or entered a plea of nolo contendere to domestic assault or to a felony.
 3. The employing agency requesting waiver must present a copy of the final court disposition of the case.
 4. Some of the factors to be considered when determining whether to grant a waiver shall be:
 - (i) Amount of time since the offense;
 - (ii) Amount of time since completion of the sentence;
 - (iii) Type, circumstances and severity of the offense;
 - (iv) Applicant's activities since the offense; and
 - (v) Applicant's ability to carry a firearm pursuant to federal and state law.
- (c) Mental Impairment – A waiver shall not be granted from pre-employment requirements for a mental impairment that would affect the person's ability to perform an essential function of the job, with or without a reasonable accommodation.
- (2) Any person who appoints any applicant who, to the knowledge of the appointor, fails to meet the minimum qualifications, and any person who signs the warrant or check for the payment of the salary of any person who, to the knowledge of the signer, fails to meet the minimum qualifications commits a Class A misdemeanor and upon conviction shall be subject to a fine not exceeding one thousand dollars (\$1,000).

Authority: T.C.A. §§ 41-4-144 and 41-7-106.

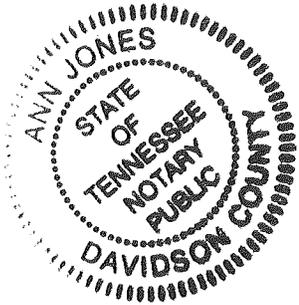
I certify that the information included in this filing is an accurate and complete representation of the intent and scope of rulemaking proposed by the agency.

Date: 4/15/2014

Signature: *Joseph Underwood*

Name of Officer: Joseph Underwood

Title of Officer: Chief Counsel for Fire Prevention and Law Enforcement



Subscribed and sworn to before me on: April 15, 2014

Notary Public Signature: *Ann Jones*

My commission expires on: June 21, 2016

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Filed with the Department of State on: 4/15/14

Tre Hargett

Tre Hargett
Secretary of State

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