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Sequence Number: 09-04-12  
Rule ID(s): 5306  
File Date (effective date): 9/6/12  
End Effective Date: 3/5/13

# Emergency Rule Filing Form

*Emergency rules are effective from date of filing for a period of up to 180 days.*

Agency/Board/Commission: Tennessee Corrections Institute  
Division:  
Contact Person: C. Edward Scudder, Jr.  
Address: 500 James Robertson Parkway  
Davy Crockett Tower, Legal Office  
Nashville, Tennessee  
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Rule Type:  
 Emergency Rule

Revision Type (check all that apply):  
 Amendment  
 New  
 Repeal

**Statement of Necessity:**  
An immediate danger to public safety exists across the State of Tennessee. Many local correctional departments are woefully understaffed. A correctional facility that is short staffed can create an unsafe condition for the corrections officers, the inmates, and most importantly, the general public. Sheriffs and jail administrators strive to keep their correctional facilities fully staffed, but they face many obstacles in hiring new corrections officers. The ability to seek a waiver of certain statutory pre-employment conditions from the Board of Control of the Tennessee Corrections Institute will allow the sheriffs and jail administrators to hire applicants who are otherwise qualified.

**Rule(s) Revised (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please enter only ONE Rule Number/RuleTitle 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

#### Table of Contents

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. §§ 41-7-106 and 41-4-144.

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 local correctional officer, 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) an Entry Level Separation
      - (ii) a General Discharge under Honorable Conditions.
    2. Waivers will not be granted from pre-employment requirements for the following separation from military service:
      - (i) Dishonorable Discharge
      - (ii) Bad Conduct Discharge
      - (iii) Other Than Honorable Discharge.
  - (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 to any misdemeanor violation of any state law or city ordinance (excluding domestic violence) with the following charges:
    - (i) relating to force, violence, theft, dishonesty, gambling, liquor and other alcoholic beverages; or
    - (ii) controlled substances, as defined in the Tennessee Drug Control Act compiled in Title 39, Chapter 17, Part 4, when the offense was classed as a misdemeanor.
  2. The employing agency requesting waiver must present a copy of the final court disposition of the case.
  3. Some of the factors to be considered when determining whether to grant a waiver shall be:
    - (i) the amount of time since the offense;
    - (ii) the amount of time since completion of the sentence;
    - (iii) the type, circumstances and severity of the offense;
    - (iv) the applicant's activities since the offense; and
    - (v) the applicant's ability to carry a firearm pursuant to federal and state law.
- (c) Mental Illness or Disorder – There is no waiver from the certification requirement set forth in T.C.A. § 41-4-144(a)(9).

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

\* If a roll-call vote was necessary, the vote by the Agency on these rules was as follows:

Board Member	Aye	No	Abstain	Absent	Signature (if required)
Sheriff Bill Oldham	X				
Dr. Deborah Newman	X				
Sheriff Armando Fontes	X				
Commissioner Derrick Schofield	X				
Director Jeremy Harrell	X				
Director Bob McKee	X				
Dr. Deborah Burris-Kitchen	X				

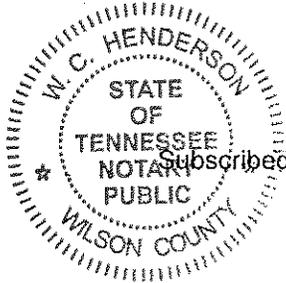
I certify that this is an accurate and complete copy of an emergency rule(s), lawfully promulgated and adopted.

Date: August 27, 2012

Signature: C Edward Scudder, Jr.

Name of Officer: C. Edward Scudder, Jr.

Title of Officer: Assistant General Counsel



Subscribed and sworn to before me on: August 29, 2012

Notary Public Signature: WCHenderson

My commission expires on: Sept 19, 2013

All emergency rules provided for herein have been examined by the Attorney General and Reporter of the State of Tennessee and are approved as to legality pursuant to the provisions of the Administrative Procedures Act, Tennessee Code Annotated, Title 4, Chapter 5.

RE Cooper, Jr.

Robert E. Cooper, Jr.  
Attorney General and Reporter

8-31-12

Date

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 2012 SEP -6 PM 1:44  
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 REGULATIONS

Filed with the Department of State on: 9/6/12

Effective for: 180 \*days

Effective through: 3/5/13

\* Emergency rule(s) may be effective for up to 180 days from the date of filing.

Tre Hargett

Tre Hargett  
Secretary of State

### **Impact on Local Governments**

Pursuant to T.C.A. §§ 4-5-220 and 4-5-228 "any rule proposed to be promulgated shall state in a simple declarative sentence, without additional comments on the merits of the policy of the rules or regulation, whether the rule or regulation may have a projected impact on local governments." (See Public Chapter Number 1070 (<http://state.tn.us/sos/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

(Insert statement here) **The proposed rules will have an impact on local governments.**

**Additional Information Required by Joint Government Operations Committee**

All agencies, upon filing a rule, must also submit the following pursuant to T.C.A. § 4-5-226(i)(1).

- (A)** A brief summary of the rule and a description of all relevant changes in previous regulations effectuated by such rule;

The rules allow the Tennessee Corrections Institute to establish criteria for determining whether to waive the minimum statutory qualifications required to be a jail administrator, corrections officer, or guard in a county jail or workhouse. Under previous law, the Corrections Institute had no authority to grant waivers of any kind.

- (B)** A citation to and brief description of any federal law or regulation or any state law or regulation mandating promulgation of such rule or establishing guidelines relevant thereto;

T.C.A. §§ 41-7-106(f) through (i) empowers the Board of Control of the Tennessee Corrections Institute to establish criteria for determining whether to waive certain minimum statutory qualifications required to be a jail administrator, corrections officer, or guard in a county jail or workhouse.

- (C)** Identification of persons, organizations, corporations or governmental entities most directly affected by this rule, and whether those persons, organizations, corporations or governmental entities urge adoption or rejection of this rule;

County sheriffs, jail administrators, and county jails will be most directly affected by this rule. These rules should make it easier to hire corrections officers and therefore sheriffs and jail administrators are likely to urge adoption of the rules.

- (D)** Identification of any opinions of the attorney general and reporter or any judicial ruling that directly relates to the rule;

There are no opinions of the attorney general and reporter or any judicial ruling that relates to this rule.

- (E)** An estimate of the probable increase or decrease in state and local government revenues and expenditures, if any, resulting from the promulgation of this rule, and assumptions and reasoning upon which the estimate is based. An agency shall not state that the fiscal impact is minimal if the fiscal impact is more than two percent (2%) of the agency's annual budget or five hundred thousand dollars (\$500,000), whichever is less;

This rule should have a minimum fiscal impact on state and local government revenues and expenditures.

- (F)** Identification of the appropriate agency representative or representatives, possessing substantial knowledge and understanding of the rule;

Beth Ashe, Executive Director, Tennessee Corrections Institute  
Lance R. Howell, Deputy Director, Tennessee Corrections Institute

- (G)** Identification of the appropriate agency representative or representatives who will explain the rule at a scheduled meeting of the committees;

C. Edward Scudder, Jr., Assistant General Counsel, Tennessee Department of Commerce and Insurance

- (H)** Office address, telephone number, and email address of the agency representative or representatives who will explain the rule at a scheduled meeting of the committees; and

C. Edward Scudder, Jr.  
State of Tennessee  
Department of Commerce and Insurance  
500 James Robertson Parkway

Davy Crockett Tower, Legal Office  
Nashville, Tennessee 37243  
615-532-5773  
ed.scudder@tn.gov

(I) Any additional information relevant to the rule proposed for continuation that the committee requests.

Chapter 1400-04  
Criteria for Waivers

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- (c) Mental Illness or Disorder – There is no waiver from the certification requirement set forth in T.C.A. § 41-4-144(a)(9).

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