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# Rulemaking Hearing Rule(s) Filing Form

*Rulemaking Hearing Rules are rules filed after and as a result of a rulemaking hearing (Tenn. Code Ann. § 4-5-205).*

*Pursuant to Tenn. Code Ann. § 4-5-229, any new fee or fee increase promulgated by state agency rule shall take effect on July 1, following the expiration of the ninety (90) day period as provided in § 4-5-207. This section shall not apply to rules that implement new fees or fee increases that are promulgated as emergency rules pursuant to § 4-5-208(a) and to subsequent rules that make permanent such emergency rules, as amended during the rulemaking process. In addition, this section shall not apply to state agencies that did not, during the preceding two (2) fiscal years, collect fees in an amount sufficient to pay the cost of operating the board, commission or entity in accordance with § 4-29-121(b).*

**Agency/Board/Commission:** Tennessee Department of Human Services  
**Division:** Vocational Rehabilitation Services  
**Contact Person:** Mandy Johnson  
**Address:** 505 Deaderick Street, Nashville, TN  
**Zip:** 37243  
**Phone:** 615-770-5496  
**Email:** [Mandy.1.Johnson@tn.gov](mailto:Mandy.1.Johnson@tn.gov)

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

- Amendment  
 New  
 Repeal

**Rule(s)** (ALL chapters and rules contained in filing must be listed here. If needed, copy and paste additional tables to accommodate multiple chapters. Please make sure that ALL new rule and repealed rule numbers are listed in the chart below. Please enter only ONE Rule Number/Rule Title per row)

Chapter Number	Chapter Title
1240-08-02	General Rules
Rule Number	Rule Title
1240-08-02-.02	Definitions

Chapter Number	Chapter Title
1240-08-03	Administration
Rule Number	Rule Title
1240-08-03-.05	Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns

Chapter 1240-08-02  
General Rules

Amendments

Rule 1240-08-02-.02, Definitions, is amended by inserting the following new paragraphs (19), (20), and (21) and renumbering subsequent paragraphs, so that as amended, the new paragraphs (19), (20), and (21) shall read:

- (19) "Unsupervised access" means the right or ability of a person to be left alone with funds, personal property, or personal identification information of a VR client or program participant with no other adults present and includes those whose employment duties include direct supervisory responsibility for individuals with such access.
- (20) "Unsupervised contact" means the right or ability of a person to meet with or be left alone with a VR client or program participant one-on-one with no other adults present and includes those whose employment duties include direct supervisory responsibility for such individuals.
- (21) "Vocational Rehabilitation Program" means the publically funded program authorized by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. including: the Tennessee Business Enterprise (TBE), the Tennessee Rehabilitation Center (TRC), the Community Tennessee Rehabilitation Centers (CTRRC), Independent Living (IL), and those funded wholly or in part through this authorization to provide employment related services consistent with the abilities, skills and interest of individuals with disabilities in a competitive, integrated setting.

Authority: T.C.A. § 4-3-1208; §§ 4-5-202, 4-5-301, et seq., 49-11-601, et seq., 71-1-104, and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. Part 361; 34 C.F.R. §§ 370.1, et seq.; 34 U.S.C. § 40102(a)(1); and Executive Order No. 43.

Chapter 1240-08-03  
Administration

Amendments

Rule 1240-08-03, Administration, is amended by inserting new Rule 1240-08-03-.05 into the Table of Contents, so that as amended, the new Table of Contents shall read:

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1240-08-03-.01 State and Local Organization and Administration	and	1240-08-03-.03 Staff Development and Training
1240-08-03-.02 Financial Need Assessment		1240-08-03-.04 Repealed
		1240-08-03-.05 Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns

New Rules

1240-08-03-.05 Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns.

- (1) Background Check Requirements for Vocational Rehabilitation Employees and Interns.
  - (a) In accordance with 34 U.S.C. § 40102(a)(1) and T.C.A. § 4-3-1208, all current and prospective Vocational Rehabilitation (VR) employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals shall be subject to background checks for the purpose of determining whether the individual has a history of any criminal activity, abuse, neglect, or exploitation that could pose a risk to the safety and well-being of persons served by VR.
  - (b) All current and prospective VR employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals must:
    1. Agree to the release and disclosure to the Department of the background information and records from any reputable source, including federal, state and local governments, the Tennessee Bureau of Investigation (TBI), and any private investigation company licensed by the State of Tennessee; and
    2. Supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the TBI and a national criminal history background check and investigation to be conducted by the Federal Bureau of Investigation (FBI).
  - (c) The cost of any background check conducted pursuant to this policy shall be paid by the Department.
  - (d) If an employee or prospective employee does not consent to the required background check and investigation, he or she may be deemed ineligible for employment with the Department.
- (2) Review of Findings from Criminal Background Checks.
  - (a) All background investigation results from the TBI shall be sent to the Department's background check unit and reviewed to determine whether the current or prospective employee, intern, or contract worker has a history of criminal convictions that could pose a safety risk for individuals receiving VR services.
  - (b) An individual may not be eligible for a position whose duties include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals if a background investigation finds any conviction, including but not limited to the following offenses (including convictions for equivalent offenses in other states or jurisdictions):
    1. The physical, sexual or emotional abuse or neglect of a child or vulnerable person;
    2. A crime of violence against a child or any person;
    3. Any offense that presents a threat to the health, safety or welfare of children or vulnerable persons; or
    4. A felony conviction involving a crime of dishonesty or fraud within the past ten (10) years.

- (c) A criminal background check shall be conducted on all prospective employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals prior to the commencement of work. In no event shall a person have unsupervised contact with an individual served by VR until the criminal background check has been completed.
  - 1. After the Department offers a Conditional Offer of Employment, the applicant or transferring employee must submit to a fingerprint background check at a Department-approved site.
  - 2. The background check will be completed prior to hire and results maintained in the Department's official background check system. A copy of the Findings/No Findings letter will be placed in the personnel file.
- (3) Current Vocational Rehabilitation Employees and Interns.
  - (a) Current VR employees in positions identified as having duties that include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals must comply with the investigation requirement as directed by their supervisor as a basis for continued employment in the position.
    - 1. Employees with convictions as provided in Rule 1240-08-03-.05(2)(b) above may be deemed ineligible for employment.
    - 2. Employees who refuse to complete the fingerprint background checks or do not get fingerprinted during the allotted time may be deemed ineligible for employment.
  - (b) Current VR employees and interns whose current position does not provide an opportunity for unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties do not currently include direct responsibility for such individuals must have a criminal background check conducted before a change of responsibilities or positions to those that include such contact, access, or responsibility for such individuals.
- (4) Alleged Errors in Background Check.
  - (a) The Department does not provide the applicant, employee, or intern a copy of the FBI criminal history record. He or she may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. If he or she believes the FBI's findings contain inaccurate or incomplete information, they may contact the FBI to challenge the findings.
- (5) Vocational Rehabilitation Employees and Interns Reporting Requirements.
  - (a) Any VR employee or intern who is cited, arrested, or convicted of a crime as provided in Rule 1240-08-03-.05(2)(b) shall report this information to the investigative unit within forty-eight (48) hours of the event. The Department's background check unit will share this information with the employee's or intern's direct supervisor if the event equates to a disqualifying offense.
  - (b) Failure of a VR employee or intern to report a citation, arrest, or conviction as provided in Rule 1240-08-03-.05(2)(b) may result in disciplinary action, up to and including termination.
  - (c) It is the responsibility of the direct supervisor or manager to report information obtained under Subparagraph (a) to the Department's Director of Human Resources and to the Department's Division of Rehabilitation Services' Director of Operations.
  - (d) After obtaining all available information, including any reports or other documentation, the

supervisor, in consultation with the Director of Human Resources or designee and the Department's Division of Rehabilitation Services' Director of Operations, may recommend any disciplinary action deemed appropriate under the circumstances for a VR employee or intern, up to and including termination.

(6) Contract Vocational Rehabilitation Workers.

- (a) In accordance with 34 U.S.C. § 40102(a)(1) and T.C.A. § 4-3-1208, all VR contractors and any subcontractors, employees, or interns of those contractors whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals shall be subject to background checks for the purpose of determining whether the individual has a history for any criminal activity, abuse, neglect, or exploitation that could pose a risk to the safety and well-being of individuals served by VR.
- (b) All VR contractors and any subcontractors, employees, or interns of those contractors whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals must agree to the release and disclosure to the contracting agency of their background information and records from any reputable source, including federal, state, and local governments, the Tennessee Bureau of Investigation (TBI), and any private investigation company licensed by the State of Tennessee.
- (c) The cost of any background check conducted pursuant to this policy shall be paid by the contractor, unless otherwise specified by contract.
- (d) The contractor shall review all background check results so that individuals in positions whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals have passed the background check requirements and have no convictions as provided in Rule 1240-08-03-.05(2)(b).
- (e) The background check for prospective employees or interns shall be completed before entering into employment with the VR contractor or subcontractor. A copy of the background check findings shall be placed in the personnel file of the contracting agency's employee and, upon request, a copy of the letter shall be sent to the Department.
- (f) The background check shall be completed for current employees or interns as a condition for maintaining employment with the VR contractor or subcontractor. A copy of the background check findings shall be placed in the personnel file of the contracting agency's employee and, upon request, a copy of the letter shall be sent to the Department.
- (g) The provisions of this Paragraph do not apply to contracts entered into prior to the effective date of this Rule unless previously provided for by contract.

Authority: T.C.A. § 4-3-1208; 34 U.S.C. § 40102(a)(1).

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

Board Member	Aye	No	Abstain	Absent	Signature (if required)

I certify that this is an accurate and complete copy of rulemaking hearing rules, lawfully promulgated and adopted by the Department of Human Services (board/commission/ other authority) on 11/25/2019, and is in compliance with the provisions of T.C.A. § 4-5-222.

I further certify the following:

Notice of Rulemaking Hearing filed with the Department of State on: 06/14/19

Rulemaking Hearing(s) Conducted on: (add more dates). 08/05/19

Date: 11-25-19

Signature: Cherrell Campbell-Street

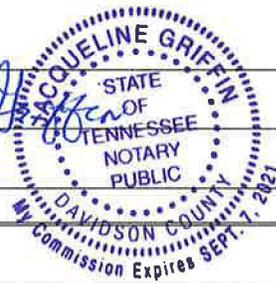
Name of Officer: Cherrell Campbell Street

Title of Officer: Deputy Commissioner, Programs and Services

Subscribed and sworn to before me on: 11/25/2019

Notary Public Signature: Jacqueline J. Griffen

My commission expires on: 09/07/2021



Agency/Board/Commission: Department of Human Services

Rule Chapter Number(s): 1240-08-02, 1240-08-03

All rulemaking hearing 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.

Herbert H. Slaty III

Herbert H. Slaty III  
Attorney General and Reporter

12/13/2019  
Date

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Effective on: 3/17/20

Tre Hargett

Tre Hargett  
Secretary of State

## **Public Hearing Comments**

One copy of a document that satisfies T.C.A. § 4-5-222 must accompany the filing.

No one from the public attended the public hearings concerning the above rules. There were no comments on the rules received either orally or in writing.

## **Regulatory Flexibility Addendum**

Pursuant to T.C.A. §§ 4-5-401 through 4-5-404, prior to initiating the rule making process, all agencies shall conduct a review of whether a proposed rule or rule affects small business.

For purposes of Acts 2007, Chapter 464, the Regulatory Flexibility Act, the Department of Human Services certifies that these rulemaking hearing rules do not appear to affect small businesses as defined in the Act.

### **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://publications.tnsosfiles.com/acts/106/pub/pc1070.pdf>) of the 2010 Session of the General Assembly)

These rules will have no projected financial 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 attached are rule revisions to the rules governing the Vocational Rehabilitation Services Division. The rules make amendments and implement new rules implementing the new background check requirements for Vocational Rehabilitation employees and contractors.

- (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;

N/A

- (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;

Vocational Rehabilitation employees and contractors; none of those contractors or employees commented on these rules.

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

N/A

- (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;

Minimal fiscal state impact. Contractors are responsible for conducting background check investigations on their employees. The state costs associated with conducting background checks on impacted Department employees are estimated to be less than \$4,500 and, thus, do not exceed \$500,000 or 2% of the Department's annual budget.

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

Whitney Page, Assistant Commissioner, Public Information and Legislative Office

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

Whitney Page, Assistant Commissioner, Public Information and Legislative Office

- (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

(I)

Whitney Page, Assistant Commissioner, Public Information and Legislative Office, 505 Deaderick Street, Nashville, TN 37243, 615-313-4707, Whitney.Page@tn.gov

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

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
REHABILITATION SERVICES DIVISION**

**CHAPTER 1240-08-02  
GENERAL RULES**

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1240-08-02-.03	Repealed		

**1240-08-02-.02 DEFINITIONS.**

The words and terms as used herein have the following meanings.

- (1) "Act" means the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. Words and terms defined in federal law and regulations are adopted by reference into these rules;
- (2) "Applicant" means an individual who applies to the Division for vocational rehabilitation services;
- (3) "Blind" means a person who had been determined to have not more than 20/200 vision acuity in the better eye with best correction, or an equally disabling loss of the visual field as evidenced by a limitation to the field of vision in the better eye to such a degree that its widest diameter subtends an angle of no greater than 20 degrees;
- (4) "Combined/Unified State Plan" means the plan for vocational rehabilitation services submitted by the Division to the Rehabilitation Services Administration in compliance with Title I, Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014.
- (5) "Commissioner" means the executive head of the Department of Human Services;
- (6) "Competitive Integrated Employment" means work that:
  - (a) Is performed on a full-time or part-time basis (including self-employment) and for which an individual is compensated at a rate that:
    1. Is not less than the higher of the rate specified in section 6(a)(1) of the Fair Labor Standards Act of 1938 (29 U.S.S. 206 (a)(1)) or the rate required under the applicable State or local minimum wage law for the place of employment;
    2. Is not less than the customary rate paid by the employer for the same or similar work performed by other employees who are not individuals with disabilities and who are similarly situated in similar occupations by the same employer and who have similar training, experience, and skills; and
    3. In the case of an individual who is self-employed, yields an income that is comparable to the income received by other individuals who are not individuals with disabilities and who are self-employed in similar occupations or on similar tasks and who have similar training, experience, and skills; and

(Rule 1240-08-02-.02, continued)

4. Is eligible for the level of benefits provided to other employees; and
- (b) Is at a location:
1. Typically found in the community; and
  2. Where the employee with a disability interacts for the purpose of performing the duties of the position with the employees with the particular work unit and the entire work site, and, as appropriate to the work performed, other persons (e.g. customers and vendors), who are not individuals with disabilities (not including supervisory personnel or individuals who are providing services to such employee) to the same extent that employees who are not individuals with disabilities and who are in comparable positions interacts with these persons; and
- (c) Presents, as appropriate, opportunities for advancement that are similar to those for other employees who are not individuals with disabilities and who have similar positions.
- (7) "Contributing Services" means services that help or cause to bring about the rehabilitation of an individual's functional limitations in order to achieve an employment objective, but do not include support services.
- (8) "Counselor" means an employee of the Tennessee Division of Rehabilitation Services who is designated in the job description as a counselor;
- (9) "Department" means the Tennessee Department of Human Services;
- (10) "Designated State Unit" means the Division of Rehabilitation Services, which is primarily concerned with vocational and other rehabilitation of individuals with disabilities and is responsible for the administration of the State's VR program;
- (11) "Division" means the Division of Rehabilitation Services (the Division or DRS);
- (12) "Employment Outcome" means entering or retaining full-time or, if appropriate, part-time competitive employment in an integrated labor market to the greatest extent practicable; that meets the definition for competitive integrated employment; including supported, customized and self-employment employment; or any other type of employment that is consistent with an individual's strengths, resources, priorities, concerns, abilities, capabilities, interests, and informed choice;
- (13) "Fair Hearing" shall mean a contested case proceeding before an impartial hearing officer designated by the Commissioner of the Department of Human Services who shall afford the individual and the Division, or their authorized representatives, the opportunity to present their case, with or without witnesses, to determine whether action or inaction by the county, area, regional, district, or state office is erroneous and should be corrected. Each party has an opportunity to disclose all relevant facts and issues, respond to and present evidence, conduct cross-examination, and submit rebuttal evidence as permitted under the Uniform Administrative Procedures Act, T.C.A. §§ 4-5-301 et seq. Hearings may be conducted by telephone, television, or other electronic means, and shall be open to public observation unless otherwise provided by state or federal law. Hearings are conducted in accordance with the Uniform Administrative Procedures Act codified at T.C.A. § 4-5-101 et seq. An aggrieved party may obtain a review of any final order by appealing to chancery court in Davidson County, the county of the official residence of the commissioner, or the county where one or more of the petitioners resides, in accordance with T.C.A. § 4-5-322. If dissatisfied with the chancery court's decision, the individual may appeal further to the court of appeals of Tennessee, in accordance with T.C.A. § 4-5-323.

(Rule 1240-08-02-.02, continued)

- (14) "Individual" means a person who has been referred or has applied for services and/or determined eligible for and receives services from the Division;
- (15) "Maximum Effort" means a specific method or action to achieve a particular benefit to pay for specified rehabilitation services. It may consist of a set policy or process which may be applied in appropriate cases. For example, the Division could have a cooperative agreement with State university officials for financial assistance officers to interview and evaluate the financial need of all Division of Rehabilitation Services sponsored students;
- (16) "Qualified Personnel" means personnel possessing those specific qualifications and/or credentials for persons providing a function for which such qualifications are required;
- (17) "Recipient" means an individual that is receiving Pre-Employment Transition Services. This individual is eligible or potentially eligible for VR services.
- (18) "Student with disability" means an individual with a disability who is no younger than 14 and no older than 22. The individual must be participating in an educational program.
- [(19) "Unsupervised access" means the right or ability of a person to be left alone with funds, personal property, or personal identification information of a VR client or program participant with no other adults present and includes those whose employment duties include direct supervisory responsibility for individuals with such access.
- (20) "Unsupervised contact" means the right or ability of a person to meet with or be left alone with a VR client or program participant one-on-one with no other adults present and includes those whose employment duties include direct supervisory responsibility for such individuals.
- (21) "Vocational Rehabilitation Program" means the publically funded program authorized by the Rehabilitation Act of 1973, as amended by the Workforce Innovation and Opportunity Act of 2014, 29 U.S.C. §§ 720 et seq. including: the Tennessee Business Enterprise (TBE), the Tennessee Rehabilitation Center (TRC), the Community Tennessee Rehabilitation Centers (CTRC), Independent Living (IL) and those funded wholly or in part through this authorization to provide employment related services consistent with the abilities, skills and interest of individuals with disabilities in a competitive, integrated setting.]
- (19[22]) "Youth with disability" means an individual with a disability who is no younger than 14 and no older than 24. The individual may or may not be participating in an educational program.

**Authority:** T.C.A. §§ 4-5-202, 4-5-301, et seq., 49-11-601, et seq., 71-1-104, and 71-1-105(12); 29 U.S.C. §§ 720, et seq.; 34 C.F.R. Part 361; 34 C.F.R. §§ 370.1, et seq.; and Executive Order No. 43.  
**Administrative History:** Original rule filed September 30, 1985; effective October 30, 1985. Amendment filed July 12, 2002; effective September 25, 2002. Repeal and new rule filed June 30, 2009; effective September 13, 2009. Amendment filed November 10, 2009; effective April 30, 2010. Amendments filed October 5, 2017; effective January 3, 2018.

**RULES  
OF  
TENNESSEE DEPARTMENT OF HUMAN SERVICES  
DIVISION OF REHABILITATION SERVICES**

**CHAPTER 1240-08-03  
ADMINISTRATION**

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	[1240-08-03-.05 Background Checks for Vocational Rehabilitation Employees, Contractors, and Interns]

**[1240-08-03-.05 BACKGROUND CHECKS FOR VOCATIONAL REHABILITATION EMPLOYEES, CONTRACTORS, AND INTERNS.**

- (1) Background Check Requirements for Vocational Rehabilitation Employees and Interns.
  - (a) In accordance with 34 U.S.C. § 40102(a)(1) and T.C.A. § 4-3-1208, all current and prospective Vocational Rehabilitation (VR) employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals shall be subject to background checks for the purpose of determining whether the individual has a history of any criminal activity, abuse, neglect, or exploitation that could pose a risk to the safety and well-being of persons served by VR.
  - (b) All current and prospective VR employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals must:
    1. Agree to the release and disclosure to the Department of the background information and records from any reputable source, including federal, state and local governments, the Tennessee Bureau of Investigation (TBI), and any private investigation company licensed by the State of Tennessee; and
    2. Supply a fingerprint sample and submit to a state criminal history background check and investigation to be conducted by the TBI and a national criminal history background check and investigation to be conducted by the Federal Bureau of Investigation (FBI).
  - (c) The cost of any background check conducted pursuant to this policy shall be paid by the Department.
  - (d) If an employee or prospective employee does not consent to the required background check and investigation, he or she may be deemed ineligible for employment with the Department.
- (2) Review of Findings from Criminal Background Checks.
  - (a) All background investigation results from the TBI shall be sent to the Department's background check unit and reviewed to determine whether the current or prospective employee, intern, or contract worker has a history of criminal convictions that could pose a safety risk for individuals receiving VR services.

(Rule 1240-08-03-.05, continued)

- (b) An individual may not be eligible for a position whose duties include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals if a background investigation finds any conviction, including but not limited to the following offenses (including convictions for equivalent offenses in other states or jurisdictions):
    - 1. The physical, sexual or emotional abuse or neglect of a child or vulnerable person;
    - 2. A crime of violence against a child or any person;
    - 3. Any offense that presents a threat to the health, safety or welfare of children or vulnerable persons; or
    - 4. A felony conviction involving a crime of dishonesty or fraud within the past ten (10) years.
  - (c) A criminal background check shall be conducted on all prospective employees and interns with unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals prior to the commencement of work. In no event shall a person have unsupervised contact with an individual served by VR until the criminal background check has been completed.
    - 1. After the Department offers a Conditional Offer of Employment, the applicant or transferring employee must submit to a fingerprint background check at a Department-approved site.
    - 2. The background check will be completed prior to hire and results maintained in the Department's official background check system. A copy of the Findings/No Findings letter will be placed in the personnel file.
- (3) Current Vocational Rehabilitation Employees and Interns.
- (a) Current VR employees in positions identified as having duties that include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties include direct responsibility for such individuals must comply with the investigation requirement as directed by their supervisor as a basis for continued employment in the position.
    - 1. Employees with convictions as provided in Rule 1240-08-03-.05(2)(b) above may be deemed ineligible for employment.
    - 2. Employees who refuse to complete the fingerprint background checks or do not get fingerprinted during the allotted time may be deemed ineligible for employment.
  - (b) Current VR employees and interns whose current position does not provide an opportunity for unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties do not currently include direct responsibility for such individuals must have a criminal background check conducted before a change of responsibilities or positions to those that include such contact, access, or responsibility

(Rule 1240-08-03-.05, continued)

for such individuals.

(4) Alleged Errors in Background Check.

- (a) The Department does not provide the applicant, employee, or intern a copy of the FBI criminal history record. He or she may obtain a copy of the record by submitting fingerprints and a fee to the FBI. Information regarding this process may be obtained at <https://www.fbi.gov/services/cjis/identity-history-summary-checks>. If he or she believes the FBI's findings contain inaccurate or incomplete information, they may contact the FBI to challenge the findings.

(5) Vocational Rehabilitation Employees and Interns Reporting Requirements.

- (a) Any VR employee or intern who is cited, arrested, or convicted of a crime as provided in Rule 1240-08-03-.05(2)(b) shall report this information to the investigative unit within forty-eight (48) hours of the event. The Department's background check unit will share this information with the employee's or intern's direct supervisor if the event equates to a disqualifying offense.
- (b) Failure of a VR employee or intern to report a citation, arrest, or conviction as provided in Rule 1240-08-03-.05(2)(b) may result in disciplinary action, up to and including termination.
- (c) It is the responsibility of the direct supervisor or manager to report information obtained under Subparagraph (a) to the Department's Director of Human Resources and to the Department's Division of Rehabilitation Services' Director of Operations.
- (d) After obtaining all available information, including any reports or other documentation, the supervisor, in consultation with the Director of Human Resources or designee and the Department's Division of Rehabilitation Services' Director of Operations, may recommend any disciplinary action deemed appropriate under the circumstances for a VR employee or intern, up to and including termination.

(6) Contract Vocational Rehabilitation Workers.

- (a) In accordance with 34 U.S.C. § 40102(a)(1) and T.C.A. § 4-3-1208, all VR contractors and any subcontractors, employees, or interns of those contractors whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals shall be subject to background checks for the purpose of determining whether the individual has a history for any criminal activity, abuse, neglect, or exploitation that could pose a risk to the safety and well-being of individuals served by VR.
- (b) All VR contractors and any subcontractors, employees, or interns of those contractors whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals must agree to the release and disclosure to the contracting agency of their background information and records from any reputable source, including federal, state, and local governments, the Tennessee Bureau of Investigation (TBI), and any private investigation company licensed by the State of Tennessee.
- (c) The cost of any background check conducted pursuant to this policy shall be paid by the contractor, unless otherwise specified by contract.

(Rule 1240-08-03-.05, continued)

- (d) The contractor shall review all background check results so that individuals in positions whose duties will include unsupervised contact with persons served by VR, unsupervised access to the funds, personal property, or personal identification information of persons served by VR, and those whose duties will include direct responsibility for such individuals have passed the background check requirements and have no convictions as provided in Rule 1240-08-03-.05(2)(b).
- (e) The background check for prospective employees or interns shall be completed before entering into employment with the VR contractor or subcontractor. A copy of the background check findings shall be placed in the personnel file of the contracting agency's employee and, upon request, a copy of the letter shall be sent to the Department.
- (f) The background check shall be completed for current employees or interns as a condition for maintaining employment with the VR contractor or subcontractor. A copy of the background check findings shall be placed in the personnel file of the contracting agency's employee and, upon request, a copy of the letter shall be sent to the Department.
- (g) The provisions of this Paragraph do not apply to contracts entered into prior to the effective date of this Rule unless previously provided for by contract.]

Authority: T.C.A. § 4-3-1208; 34 U.S.C. § 40102(a)(1).