

State of South Carolina
Executive Department



FILED

APR 23 2018

Mark Hammond
SECRETARY OF STATE

Office of the Governor

EXECUTIVE ORDER NO. 2018-16

Waiver of Regulations to Expedite Procurement and Assist with Staffing at the Department of Corrections

WHEREAS, on April 15, 2017, the first of a series of inmate-on-inmate altercations broke out at 7:15 p.m. in the Lee Correctional Institute, a maximum-security facility; and

WHEREAS, inmate altercations occur due to control of money, territory, and contraband both inside and outside of the Lee Correctional Institute; and

WHEREAS, the Department of Corrections ("Department") needs additional correctional officers to stop such altercations, and has trouble hiring and retaining correctional officers and other employees at current salary levels; and

WHEREAS, altercations such as the one on April 15, 2018 are coordinated through cell phones thrown over prison walls and delivered by drones and other means into prison yards; and

WHEREAS, the use of cell phones by incarcerated individuals allows the coordination of activities such as riots inside prison facilities, and allows inmates to direct and participate in criminal activities outside of the correctional facilities; and

WHEREAS, it bears repeating that in 2017, the Department confiscated 6,272 cell phones, which are one of many types of contraband, and that incarcerated individuals inside the Lee Correctional Institute filmed the riots on cell phones, posting videos and pictures of the incident; and

WHEREAS, an incarcerated individual who possesses contraband and a person who attempts to furnish or furnishes contraband to an incarcerated individual are guilty of a felony that is punishable by a fine between \$1000-\$10,000, and may include 1-10 years imprisonment; and

WHEREAS, cell phone use by incarcerated individuals is a security concern and a growing criminal justice crisis leading to violence inside and outside of correctional facilities; and

WHEREAS, the Federal Communications Commission (“FCC”) holds it unlawful under 47 USC §302a(b) to manufacture, market, or sell “jammers” that prohibit cell phone signals and could be used to stop communications within prisons, imposing fines as high as \$112,000 for one act within this statute and providing for prosecution and criminal time for such offenses; and

WHEREAS, the Governor has issued Executive Order 2018-10 ordering the State Guard to assist the Department, and the State Guard has committed resources to patrol outside of prisons to provide additional support in prohibiting contraband, which has started at Broad River and is now moving to Lee Correctional Institute; and

WHEREAS, the Department has taken other steps to stop contraband from entering correctional facilities and has worked to hire more security officers at a higher pay rate; and

WHEREAS, despite the Department’s continued efforts, recent violence and current continued threats of violence confirm that a danger exists in the Department due to contraband and staffing levels, and that conditions are a serious threat to the safety and security of citizens and inmates; and

WHEREAS, the Governor may take all measures and actions necessary to prevent violence and threats of violence and can proclaim an emergency; and

WHEREAS, the Governor may direct any persons to take such actions that in his opinion may prevent or minimize danger to life, limb and property; and

WHEREAS, section 25-1-440(3) under of the South Carolina Code of Laws provides that the Governor may also suspend provisions of “existing regulations proscribing procedures for conduct of state business if strict compliance with the provisions thereof would in any way prevent, hinder, or delay necessary action in coping with the emergency”; and

WHEREAS, section 25-1-440(4) of the South Carolina Code of Laws states that the Governor may “utilize all available resources of state government as reasonably necessary to cope with the emergency”; and

WHEREAS, section 11-35-1570 of the South Carolina Code of Laws allows emergency procurements for immediate threats to public health or welfare, and the Department has an emergency that requires the expedited procurement of goods and services to make correctional facilities safer for employees, the general public and incarcerated persons.

NOW, THEREFORE, by virtue of the authority vested in me as Governor of the State of South Carolina and pursuant to the Constitution and Laws of this State and the powers conferred upon me therein, I hereby proclaim an emergency due to the contraband and staffing levels, as defined in

section 1-3-420 of the South Carolina Code of Laws, exists within the prison facilities managed by the Department and therefore direct the following:

- The Department shall utilize emergency procurement procedures to purchase and contract for all items that will assist in securing prison facilities and making prisons safer for employees and those incarcerated. The Department shall include a copy of this Executive Order as the written determination required under section 11-35-1570 of the South Carolina Code of Laws.
 - With respect to hiring for the Department, I waive* all Human Resource Management Regulations to expedite hiring and salary reform for *security personnel* and other employees as the Agency Director determines are needed for security concerns. The Department's Human Resources office shall inform managers which positions will be subject to expedited hiring and salary reform. Regulations waived include, but are not limited to:
 - §19-703.2 Report of Job Vacancies (waiving required posting of job vacancies and allowing on-the-spot hiring);
 - §19-703.04 Exemptions to Posting Job Announcements (allowing this Executive Order to preempt need for requisite certification);
 - §19-704.06 Reclassifications (providing for reclassifications without these restrictions);
 - §19-705.03 Hiring Salaries (providing for hiring without these restrictions);
 - §19-705.04 Salary Increases (waiving required approval under §19-705.06 Special Salary Adjustments);
 - §19-706.04 Hiring Salaries, Salary Increases [...] for Employees in Unclassified Positions; and
 - §19-706.05 Compensation Not Included in Base Salary (waiving administration requirements of bonus programs); and
 - §19-707.02 Overtime-Compensatory Time subsection (K) and the provision preventing exempt employees, specifically Lieutenant positions, from receiving overtime for time worked greater than 160 hours in a 28-day FLSA working week. The Department of Administration shall assist the Department as needed. This temporary wage change shall be in effect for three months and extended as needed by the Director. Lieutenants will receive notification 7 days in advance before ending this temporary modification.
- *Said waivers of regulatory law do not exempt the Department from having lawful pay practices under state and federal law, or the requirement to be an equal opportunity employer.
- In addition to already existing incentives (Retention Bonus, Referral Bonus, Spot Bonus and Medical/Mental Health Signing Bonus), the Department may look at creating new or expanding current programs as allowed under section 8-1-190 of the South Carolina Code of Laws and shall provide monetary rewards as an incentive. The Department of Administration shall work with the Department.

- The Department shall utilize all available resources of state government as reasonably necessary to cope with the emergency and resources that may assist in funding necessary changes.

The Department may take all other and further actions as deemed necessary by the Director of the Department as allowed under this Executive Order. This emergency proclamation shall remain in place until modified, amended, or revoked by subsequent Executive Order.

This Order is effective immediately.



GIVEN UNDER MY HAND AND THE GREAT SEAL OF THE STATE OF SOUTH CAROLINA, THIS 23rd DAY OF APRIL, 2018.

A handwritten signature in black ink, appearing to read "Henry McMaster", is written over a horizontal line.

HENRY MCMASTER
Governor

ATTEST:
A handwritten signature in black ink, appearing to read "Mark Hammond", is written over a horizontal line.
MARK HAMMOND
Secretary of State