

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: All Rules

DEADLINE FOR RECEIPT: Thursday, August 11, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

Please correct the numbering on each rule so that each page begins with line 1, rather than continuing from the previous page.

Please add page numbers to each Rule.

Please correct the formatting of the introductory statement and conform to our formatting examples, which can be found at: <https://www.oah.nc.gov/rules-division/information-rulemaking-coordinators/rule-format-examples>

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: July 28, 2022

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0101

DEADLINE FOR RECEIPT: Thursday, August 11, 2022.

PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

With respect to the change in language to “Law Enforcement Officer” throughout the Rule, is this term defined elsewhere? The relevant statutes (17C-2, 17C-6, 17C-10) all refer to “Criminal Justice Officer.”

In (7), on p.3, line 76, change “is” to “it.”

In (10), line 82, please clarify the term “committed.” Specifically, how is it determined that an officer committed a crime, if he or she was not convicted of it?

In (12), please add a comma following “Willis” on line 89, italicize “appeal dismissed” on lines 89-90, and add a space between “174” and “(1989)” on line 91.

In (13), what is a “qualifying event”? Is this term defined elsewhere?

In (13), is there a reason (a) and (b) cannot be combined? For example: “...for all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include...”

In (13)(b), line 102, please add the oxford comma following “pleads guilty.”

In (13)(c), is there a reason the “appointing agency head” is omitted, despite being in (a) and (b)?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel

Date submitted to agency: July 28, 2022

1 12 NCAC 09B .0101, PUBLISHED IN VOLUME 36, ISSUE 31, PAGE 1686-1688, IS BEING AMENDED AS
2 FOLLOWS:

3
4 SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND
5 TRAINING

6
7 SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

8
9 12 NCAC 09B .0101 MINIMUM STANDARDS FOR ~~CRIMINAL JUSTICE~~ LAW ENFORCEMENT
10 OFFICERS

11 Every ~~criminal justice~~ law enforcement officer who is employed in or has received a conditional offer of
12 employment for a certified position by an agency in North Carolina shall:

- 13 (1) be a citizen of the United States;
- 14 (2) be at least 20 years of age; ~~[and be at least 18 years of age for telecommunicators;]~~
- 15 (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09B .0106;
- 16 ~~(3) be of good moral character pursuant to G.S. 17C 10 as evidenced by the following:~~
- 17 ~~(a) not having been convicted of a felony;~~
- 18 ~~(b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for~~
19 ~~five years or the completion of any corrections supervision imposed by the courts,~~
20 ~~whichever is later;~~
- 21 (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;
- 22 (5) have had a medical examination as required by 12 NCAC 09B .0104;
- 23 ~~(e) not having been convicted of an offense that would prohibit the possession of a firearm or~~
24 ~~ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with~~
25 ~~subsequent amendments and editions and can be found at no cost at~~
26 ~~[https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf)~~
27 ~~partI-chap44.pdf;~~
- 28 ~~(d) having submitted to and produced a negative result on a drug test within 60 days of~~
29 ~~employment or any in service drug screening required by the appointing agency that~~
30 ~~meets the certification standards of the Department of Health and Human Services for~~
31 ~~Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet~~
32 ~~this requirement may be obtained, at no cost, at [https://www.samhsa.gov/programs-](https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list)~~
33 ~~campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list;~~
- 34 ~~(e) submitting to a background investigation consisting of the verification of age and~~
35 ~~education and a criminal history check of local, state, and national files;~~
- 36 ~~(f) being truthful in providing information to the appointing agency and to the Standards~~
37 ~~Division for the purpose of obtaining probationary or general certification;~~

38 ~~(g) not having pending or outstanding felony charges that, if convicted of such charges,~~
39 ~~would disqualify the applicant from holding such certification, pursuant to G.S. 17C-13;~~
40 ~~and~~

41 ~~(h) not having engaged in any conduct that brings into question the truthfulness or credibility~~
42 ~~of the officer, or involves "moral turpitude." "Moral turpitude" is conduct that is contrary~~
43 ~~to justice, honesty, or morality, including conduct as defined in: In re Willis 288 N.C. 1,~~
44 ~~215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6~~
45 ~~S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants~~
46 ~~for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E.~~
47 ~~130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court~~
48 ~~decisions that cite these cases as authority.~~

49 ~~(4) have been fingerprinted and a search made of local, state, and national files to disclose any~~
50 ~~criminal record;~~

51 ~~(6)(5) have been examined and certified by a licensed surgeon, physician, physician assistant, or nurse~~
52 ~~practitioner to meet physical requirements necessary to fulfill the officer's particular~~
53 ~~responsibilities and shall have produced a negative result on a drug screen administered according~~
54 ~~to the following specifications: as described in 12 NCAC 09C .0310;~~

55 ~~(a) the drug screen shall be a urine test consisting of an initial screening test using an~~
56 ~~immunoassay method and a confirmatory test on an initial positive result using a gas~~
57 ~~chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests~~
58 ~~authorized or mandated by the Department of Health and Human Services for Federal~~
59 ~~Workplace Drug Testing Programs;~~

60 ~~(b) a chain of custody shall be maintained on the specimen from collection to the eventual~~
61 ~~discarding of the specimen;~~

62 ~~(c) the drug screen shall test for the presence of at least cannabis, cocaine, phenacyclidine~~
63 ~~(PCP), opiates, and amphetamines or their metabolites;~~

64 ~~(d) the test threshold values meet the requirements established by the Department of Health~~
65 ~~and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR~~
66 ~~7920 (2017) incorporated by reference, including later amendments and editions found at~~
67 ~~no cost at [https://www.federalregister.gov/documents/2017/01/23/2017-](https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs)~~
68 ~~00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs;~~

69 ~~(e) the test conducted shall be not more than 60 days old, calculated from the time when the~~
70 ~~laboratory reports the results to the date of employment; and~~

71 ~~(f) the laboratory conducting the test shall be certified for federal workplace drug testing~~
72 ~~programs, and shall adhere to applicable federal rules, regulations, and guidelines~~
73 ~~pertaining to the handling, testing, storage, and preservation of samples;~~

- 74 (7) ~~(6)~~ have been administered a psychological screening examination in accordance with G.S. 17C-
75 10(c). The psychological screening shall be valid for a period of one year from the date on which
76 is was administered.
- 77 ~~(8) (7)~~ have been interviewed personally by the department head or the department head representative or
78 representatives to determine such things as the applicant's appearance, demeanor, attitude, and
79 ability to communicate; and as described in 12 NCAC 09B .0105; and
- 80 ~~(9)~~ have a background investigation conducted by the employing agency, including a personal
81 interview as required by 12 NCAC 09B .0102;
- 82 ~~(10)~~ not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;
- 83 ~~(11)~~ for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily
84 complete the employing agency's in-service firearms training program as prescribed in 12 NCAC
85 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission
86 of the application for appointment to the Commission and must be completed using the agency
87 approved service handgun(s) and any other weapon(s) that the applicant has been issued or
88 authorized to use by the agency; and
- 89 ~~(12)~~ be of good moral character as defined in: : In re Willis 288 N.C. 1, 215 S.E. 2d 771 appeal
90 dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg,
91 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635
92 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308
93 S.E. 2d 647 (1983); and later court decisions.
- 94 ~~(13)(8)~~ make Make the following notifications:
- 95 (a) within ~~30 days~~ five business days of the qualifying event notify the Standards Division
96 and the appointing ~~department~~ agency head in writing of all criminal offenses for which
97 the officer is charged or arrested. This shall include traffic offenses identified in the Class
98 B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving
99 while impaired (DWI);
- 100 (b) within ~~30 days~~ five business days of the qualifying event notify the Standards Division
101 and the appointing ~~department~~ agency head in writing of all criminal offenses for which
102 the officer pleads no contest, pleads guilty or of which the officer is found guilty. This
103 shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses
104 of driving under the influence (DUI) or driving while impaired (DWI);
- 105 (c) within ~~30 days~~ five business days of service, officers shall notify the Standards Division
106 of all Domestic Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S.
107 50C) that are issued by a judicial official against the officer;
- 108 (d) within ~~30 days~~ five business days of the date the case was disposed of in court, the
109 ~~department~~ agency head, provided he or she has knowledge of the officer's arrests or

110 criminal charges and final dispositions, shall also notify the Standards Division of arrests
111 or criminal charges and final disposition;

112 (e) within ~~30~~ five business days of the issuance of all Domestic Violence Protective Orders
113 (G.S. 50B) and Civil No Contact Orders (G.S. 50C), the ~~department~~ agency head,
114 provided he or she has knowledge of the order, shall also notify the Standards Division of
115 these orders.

116 (9) (f) The required notifications in this Rule shall be in writing and shall specify the nature of
117 the offense or order, the court in which the case was handled, the date of the arrest,
118 criminal charge, or service of the order, and the final disposition. The notification shall
119 include a certified copy of the order or court documentation and final disposition from the
120 Clerk of Court in the county of adjudication. The requirements of this Item shall be
121 applicable at all times during which the officer is employed and certified by the
122 Commission and shall also apply to all applicants for certification. Receipt by the
123 Standards Division of a single notification, from the officer or the ~~department~~ agency
124 head, shall be sufficient notice for compliance with this Item.

125 (14) The requirements of this Rule shall apply to all applicants for certification and shall also apply at
126 all times during which the law enforcement officer is certified by the Commission.

127
128 *History Note: Authority G.S. 17C-6; 17C-10;*
129 *Eff. January 1, 1981;*
130 *Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995;*
131 *November 1, 1993; July 1, 1990;*
132 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
133 *2019;*
134 *Amended Eff. October 1, 2020;*
135 *Temporary Amendment Eff. February 15, 2022.*
136 *Amended Eff. October 1, 2022*

137

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0103

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In reviewing this Rule, the staff recommends the following changes be made:

In (b), line 10, and (c), line 12, please capitalize state if referring only to the State of North Carolina.

In (c), line 15, please clarify the reference and citations to the General Statutes. Are you referring to the entirety of Chapters 121 and 132?

In (d), line 19, is there another rule or statute that identifies the actions that require certification by the Commission? Otherwise, there is ambiguity as to what an applicant may or may not do until the agency receives the criminal record report.

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Brian Liebman
Commission Counsel
Date submitted to agency: July 28, 2022

1 12 NCAC 09B .0103, PUBLISHED IN VOLULME 36, ISSUE, 21, PAGE 1688, IS BEING AMENDED AS
2 FOLLOWS:

3
4 12 NCAC 09B .0103 FINGERPRINT CRIMINAL HISTORY RECORD CHECK

5 (a) Each applicant for employment certification shall submit electronic fingerprints in the Statewide Automated
6 Fingerprint Identification System (SAFIS). ~~be fingerprinted twice, using FBI Form FD 258, Fingerprint Record~~
7 ~~Card.~~

8 (b) The employing agency ~~shall check the applicant's fingerprints against local files and shall forward both~~
9 ~~completed the applicant's fingerprints fingerprint forms~~ to the North Carolina State Bureau of Investigation for
10 ~~fingerprint and a criminal history record check checks~~ utilizing fingerprints against state and federal files.

11 (c) The employing agency will receive a report of the results of the fingerprint criminal history record check
12 utilizing fingerprints against state and federal files. ~~Regardless of the disposition of the inquiry, the~~ The employing
13 agency shall permanently retain the results of the fingerprint criminal history record check utilizing fingerprints in
14 the applicant's personnel file. compliance with the North Carolina Department of Natural and Cultural Resources
15 Retention and Disposition Schedule established pursuant to G.S. 121 and G.S. 132. The employing agency shall
16 include the results of the fingerprint criminal history record check with the applications submitted to the
17 Commission.

18 (d) An applicant for employment certification as a law enforcement officer may not ~~be employed or placed in a~~
19 ~~perform any action sworn law enforcement position requiring certification by the Commission~~ prior to the date on
20 which the employing agency receives ~~receives~~ the report of the results of the fingerprint criminal history record
21 check utilizing fingerprints. ~~Check unless all of the following requirements are met:~~

22 (1) ~~The employing department head determines that the delay in receiving the fingerprint record~~
23 ~~check will result in undue hardship to the agency and certifies that determination to the~~
24 ~~Commission.~~

25 (2) ~~The preliminary criminal history investigation conducted by the employing agency has failed to~~
26 ~~disclose any disqualifying criminal record.~~

27 (3) ~~The applicant meets all of the minimum standards for employment and certification contained in~~
28 ~~this Subchapter.~~

29 (4) ~~The Fingerprint Record Cards have in fact been executed, delivered to, and received by the State~~
30 ~~Bureau of Investigation for the purpose of a criminal history search.~~

31 (5) ~~The applicant has completed and signed the applicant's certificate (Section A) of the Commission's~~
32 ~~Report of Appointment, wherein the applicant's temporary employment and probationary law~~
33 ~~enforcement officer certification is acknowledged to be contingent on the consistency of the~~
34 ~~fingerprint record check with the information provided in the Personal History Statement Form.~~

35 (e) ~~An applicant for employment as a criminal justice officer other than a law enforcement officer may be employed~~
36 ~~prior to the date on which the employing agency receives the report of the results of the fingerprint record check, if~~
37 ~~all of the following requirements are met:~~

- 38 ~~(1) The completed Fingerprint Record Cards have been forwarded to and received by the State Bureau~~
39 ~~of Investigation.~~
- 40 ~~(2) The applicant meets all other minimum requirements for employment and certification.~~
- 41 ~~(3) The applicant's continued employment is contingent upon the agency's review and evaluation of~~
42 ~~the results of the fingerprint record check.~~

43

44 *History Note: Authority G.S. 17C-6; 17C-10;*

45 *Eff. January 1, 1981;*

46 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
47 *2019.*

48 *Amended Eff. October 1, 2022*

49