

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

AGENCY: N.C. Department of Justice

RULE CITATION: 12 NCAC 02J .0201 and Form

**DEADLINE FOR RECEIPT: Friday, September 15, 2023.**

***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:

*In the Submission for Permanent Rule Form, there is no explanation for rulemaking in Box 9B. Please add one and resubmit the form.*

*In (2), the exception to the exception on line 13 is better placed on line 8. Consider revising the sentence on line 8: “A specific exception to this educational requirement is granted to an applicant who has not had more than a 12 month break in service and.” I would then delete “an applicant” from the beginning of (a) and (b).*

*In (2), is “break in service” defined?*

*In (2)(b), line 11, please define or delete “properly”.*

*In (2)(b), line 12, do you mean “on or before” March 14, 1973?*

*If you choose not to revise the exception to the exception on line 13, please change “will” to “shall”.*

*In (3), line 14, please define “basic knowledge”.*

*In (3), line 15, what are “these Rules”? Please add a cross reference to the specific chapter or subchapter which your applicants will be tested on.*

*The “Note” following (3) is not a “note” pursuant to 26 NCAC 02C .0110. An agency may add a note only to provide illustrations, examples, or clarifications “which, when not read, do not change the meaning of the rule.” Here, your note specifically outlines the material that the applicant will be tested upon. Please revise (3) to include this material in the body of the Rule. Consider making the note (3)(a) and the material about testing dates on line 20 (3)(b).*

*Also, depending on how you combine the note into (3), please make sure that “these rules” as referenced in the Note is also clarified.*

Brian Liebman  
Commission Counsel

Date submitted to agency: September 1, 2023

*In (3), line 22, what does it mean to “successfully complete” the coursework?*

*In (3), line 23, what “coursework” must the applicant complete? Please be specific.*

*In (4), line 25, what standards within 12 NCAC 09 must the applicant comply with? That’s a large chapter and contains standards for many different types of officers. Please be specific.*

*Is (4) necessary? Does it not repeat G.S. 74G-8?*

*In (5), lines 30-31, what are you testing with the polygraph examination?*

*In (7)(a), line 37, define “reliable”.*

*In (7)(a), p.2, lines 1-2, this sounds like you’re referencing federal regulations. Can you incorporate a specific provision of the CFR by reference? A document issued by the federal agency?*

*In (7)(c), line 5, consider deleting “whose use shall be” and “at least”.*

*In (7)(c), line 6, does “their metabolites” refer to just opiates and amphetamines or to any of the drugs listed? Consider using commas to set off the various clauses for clarity.*

*In (7)(d), lines 7-8, what values are being incorporated? Is this a document? A provision of the CFR? This is unclear and the incorporation, in my view, isn’t valid without a specific document or provision cited.*

*In (7)(d), line 16, please indent the text so it is flush with the first line of (d).*

*In (7)(f), lines 25-26, the clause “except that... of this Rule” is out of place. Why not include this in (7)(c)?*

*In (7)(f), line 26, what are “drugs”? Does this include legally prescribed medications? Over the counter medications?*

*In (7)(g), consider: “...the services of a licensed physician, who will serve as the medical Review Officer (MRO) for the purpose of reviewing drug tests reported by the laboratory.”*

*In (7)(g), line 30, must the physician be licensed in North Carolina, or any state?*

*In (8), line 32, consider “convicted” instead of “found guilty of”.*

*In (8), lines 33 and 34, why are DUI and DWI specifically referenced? Do they not fall under “all criminal offenses”?*

Brian Liebman  
Commission Counsel

Date submitted to agency: September 1, 2023

*In (8), lines 34-35, a minor traffic offense is defined as an offense where the maximum punishment is “60 days or less”. 60 days of confinement? Probation? Are minor traffic offenses usually punishable by jail time? Would a DWI or DUI be a minor traffic offense, since they are not punishable by more than 60 days of jail time?*

*In (8), line 36, what do you mean by the “nature” of the offense? Do you mean the charge?*

*In (8), line 37, add a comma following “handled”.*

*In (8), p.3, line 1, please define “case disposition”.*

*In (8), lines 1-2, is there a difference between the Campus Police Administrator and the Department Head? Are these roles defined somewhere?*

*In (8), lines 4-7, what are you requiring? For instance, in 12 NCAC 09B .0101(13), the officer must notify the Standards Division and the agency. Does a campus police officer have to notify the Standards Division?*

*In (9), line 9, G.S. 17C-10(c) does not define “good moral character”. How is that term defined here?*

*In (10), line 10, how is it determined that the officer “committed” a crime? This is not defined in 02J .0209(b), or anywhere in 02J that I can see.*

*In (10), line 10, please add a 0 to “2J” so that it reads “02J”.*

*In (10), line 11, what does the language “such that the applicant would be ineligible for commissioning as a Campus Police officer” mean? Doesn’t this very rule set the standards for eligibility? If you are referring to other standards, please add a cross reference. If not, this is circular.*

*In your History Note, I think a reference to G.S. 74G-8 might be helpful, with respect to (4).*

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

1 **12 NCAC 02J .0201 is amended as published in 37:20 NCR 2017-2019 as follows:**

2  
3 **12 NCAC 02J .0201 MINIMUM STANDARDS FOR CAMPUS POLICE OFFICERS**

4 Every campus police officer must meet the following requirements to obtain and maintain a campus police  
5 commission:

- 6 (1) be a citizen of the United States;
- 7 (2) be a high school graduate or have passed the General Educational Development Test indicating high  
8 school equivalency. A specific exception to this educational requirement is granted to:
- 9 (a) an applicant who was the holder of a valid campus police commission on June 30, 1972;  
10 or
- 11 (b) an applicant properly certified as a law enforcement officer by the Criminal Justice  
12 Education and Training Standards Commission on March 14, 1973.

13 In either case, the exception will not be applicable if the applicant has had more than a 12 month break in service;

- 14 (3) have attained a score of not less than 80 percent on a written examination of basic knowledge of  
15 laws of arrest, search, and investigation, and of these Rules to be administered by a representative  
16 of the North Carolina Department of Justice;

17 Note: All examination questions will be based on the book Arrest, Search, and Investigation as published by and  
18 available from the ~~Institute~~ School of Government, the University of North Carolina at Chapel Hill, Chapel Hill, North  
19 Carolina 27514, and these Rules.

20 Applicants will be advised in writing of test dates and sites at least five days prior to the examination. In the event an  
21 applicant fails to successfully complete the examination, only one re-test will be allowed. Upon an applicant's failure  
22 to successfully complete the second test, the applicant must successfully complete accredited Basic Law Enforcement  
23 Training coursework prior to re-testing;

- 24 (4) meet the minimum standards for criminal justice officers established by the North Carolina Criminal  
25 Justice Education and Training Standards Commission, appearing in Title 12, Chapter 9 of the North  
26 Carolina Administrative Code; which Standards are hereby incorporated by reference, and shall  
27 automatically include any later amendments and editions of the referenced material;
- 28 (5) applicants who do not hold general certification as a law enforcement officer issued by the Criminal  
29 Justice Education and Training Standards Commission or the North Carolina Sheriff's Education  
30 and Training Standards Commission, must submit to and successfully complete a polygraph  
31 examination administered by the State Bureau of Investigation;
- 32 (6) be at least 20 years of age;
- 33 (7) have produced a negative result on a drug screen administered according to the following  
34 specifications:
- 35 (a) the drug screen shall be a urine test consisting of an initial screening test using an  
36 immunoassay method and a confirmatory test on an initial positive test result using a gas  
37 chromatography mass spectrometry (GC/MS) or other reliable initial and confirmatory

1 tests as may, from time to time, be authorized or mandated by the Department of Health  
2 and Human Services for Federal Workplace Drug Testing Programs;

- 3 (b) a chain of custody shall be maintained on the specimen from collection to the eventual  
4 discarding of the specimen;
- 5 (c) the drugs whose use shall be tested for shall include at least cannabis, cocaine,  
6 phencyclidine (PCP), opiates and amphetamines or their metabolites;
- 7 (d) the test threshold values established by the Department of Health and Human Services for  
8 Federal Workplace Drug Testing Programs are hereby incorporated by reference, and shall  
9 automatically include any later amendments and editions of the referenced material. Copies  
10 of this publication may be inspected at the office of the agency:

11 Campus Police Program

12 North Carolina Department of Justice

13 ~~114 West Edenton Street~~ PO Drawer 179

14 ~~Old Education Building~~

15 Raleigh, North Carolina 27602

16 and may be obtained at no charge from the office of the agency:

17 Campus Police Program

18 North Carolina Department of Justice

19 Post Office ~~Box 310~~ Drawer 179

20 Raleigh, North Carolina 27602

- 21 (e) the test conducted shall be not more than 60 days old, calculated from the time when the  
22 laboratory reports the results to the date of employment;
- 23 (f) the laboratory conducting the test must be certified for federal workplace drug testing  
24 programs, and must adhere to applicable federal rules, regulations and guidelines  
25 pertaining to the handling, testing, storage and preservation of samples, except that  
26 individual agencies may specify other drugs to be tested for in addition to those drugs set  
27 out in Item (7)(c) of this Rule; and
- 28 (g) every agency head shall be responsible for making adequate arrangements for the services  
29 of a Medical Review officer (MRO) for the purpose of review of drug tests reported by the  
30 laboratory and such officer shall be a licensed physician;
- 31 (8) notify the Campus Police Administrator in writing of all criminal offenses for which the officer is  
32 arrested, pleads no contest, pleads guilty, or is found guilty of. This shall include all criminal  
33 offenses except minor traffic offenses and shall specifically include any offense of Driving Under  
34 the Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for  
35 purposes of this Item, as an offense where the maximum punishment allowable is 60 days or less.  
36 The notifications required must specify the nature of the offense, the court in which the case was  
37 handled and the date of the conviction if applicable. The notifications must be received by the

1 Campus Police Administrator within ~~30~~5 days of the date of the case disposition. Applicants and  
2 officers required to notify the Campus Police Administrator under this Item shall also make the  
3 same notification to their Department Head within ~~20~~5 days of the date the case was disposed of in  
4 court. However, the notification to the Campus Police Administrator does not excuse the officer  
5 from making an independent notification otherwise required by either the Criminal Justice  
6 Education and Training Standards Commission or the Sheriffs' Education and Training Standards  
7 Commission. The notifications required by this section shall be required while the application is  
8 pending as well as subsequent to a commission being issued;

- 9 (9) be of good moral character as referred to in G.S. 17C-10(c); and
- 10 (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 2J .0209(b),  
11 such that the applicant would be ineligible for commissioning as a Campus Police officer.

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13 *History Note: Authority G.S. 74G-4;*  
14 *Eff. April 1, 2006;*  
15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. October 4,*  
16 *2016; Amended Eff. October 1, 2023.*  
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