

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

AGENCY: N.C. Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09C .0104

DEADLINE FOR RECEIPT: June 10, 2024

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:

Generally, to the Rule: Explain why this rule does not contain substantial changes pursuant to G.S. 150B-21.2.

Page 1, Line 1: The introductory statement is in error. Please see 26 NCAC 02C .0404.

Page 1, Line 6: Where is "law enforcement agency" defined? The Commission has defined "criminal justice agency" in 12 NCAC 09A .0103 (which has the same definition as in G.S. 17C-2(2)). Explain the difference?

Page 1, Line 18: Add "paragraph" before (a).

Page 2, Lines 1-2: Here the Division is required to notify the officer that the officer shall notify the Division. Where is the rule which requires the officer to notify the Division?

Page 2, Lines 1-2: Explain the authority to establish rules concerning the appeal to Superior Court.

Page 2, Lines 3-5: Explain the authority to establish rules concerning the appeal to Superior Court.

Page 2, Lines 3-5: Explain the authority to enter the officer's name in the database prior to the determination by the Superior Court after an appeal has been filed?

Page 2, Line 7: Why is G.S. 17E-15 stated as authority? This is a different commission.

Page 2, Line 7: Explain why you don't need to include G.S. 17C-6?

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

William W. Peaslee
Commission Counsel

Date submitted to agency: May 24, 2024

12 NCAC 09C .0104 is adopted as follows:

12 NCAC 09C .0104 [DEPARTMENT] AGENCY HEAD RESPONSIBILITIES: CRITICAL INCIDENT REPORTING

(a) For all law enforcement agencies in the State that employ personnel certified by the North Criminal Justice Education and Training Standards Commission, the [Department] Agency head shall submit the Critical Incident Report, (F-27), to the Criminal Justice Standards Division no later than [the following January 15th of each year listing all incidents] 30 days after making the determination that an incident involving any use of force by a law enforcement officer [or justice officer] that [results] resulted in death or serious bodily injury to a [person] person has occurred. The [Annual] Critical Incident Report (F-27) shall contain the following:

- (1) date of incident
- (2) location of incident
- (3) person(s) involved and their participation
- (4) whether the incident involved serious bodily injury or death

~~[(b) Information contained in the submitted Annual Critical Incident Report, (F-27), that is confidential under State or federal law shall remain confidential.]~~

(b) In addition to the reporting in (a) of this rule, the Agency head for any law enforcement agency in the State that employs personnel certified by the North Criminal Justice Education and Training Standards Commission, shall submit the Annual Critical Incident Report, (F-27A), to the Criminal Justice Standards Division no later than the following January 15th of each year, listing all incidents involving any use of force by a law enforcement officer that results in death or serious bodily injury to a person. The Annual Critical Incident Report (F-27A) shall contain the following:

- (1) the total number of incidents involving the use of force resulting in death or serious bodily injury
- (2) date of incident
- (3) location of incident
- (4) whether the incident had previously been reported on the Critical Incident Report (F-27)

~~(c) Information contained in the submitted Critical Incident Report, (F-27) and the Annual Critical Incident Report, (F-27A), that is confidential under State or federal law shall remain confidential.~~

(d) The Division shall develop and maintain a statewide database for use by law enforcement agencies that tracks all critical incident data in North Carolina that is reported to the Division.

(e) The Division shall give notice to any law enforcement officer who is reported to the Division as having been involved in a critical incident. The notice will contain language:

- (1) notifying the officer that, if the officer disputes being involved in a critical incident, the officer has a right within 30 days after receipt of the notice to request a hearing in superior court for a determination of whether the officer's involvement was properly placed in the database

1 (2) that the officer shall notify the Division when a request for a superior court review has been filed and
2 provide a copy of the filing to the Division

3 (3) that if the Division has not received notification from the officer that a request for a superior court review
4 has been filed within 30 days of his/her receipt of the Division's notice, the officer's name will be placed in
5 the database.

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7 *History Note: Authority G.S. 17C-15; 17E-15;*
8 *Eff. July 1, 2024*

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

AGENCY: N.C. Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09G .0208

DEADLINE FOR RECEIPT: June 10, 2024

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:

Page 1, Line 1: The introductory statement is in error. Please see 26 NCAC 02C .0404

Page 2, Lines 7-9: Paragraph (b) requires "every correctional officer...shall..." Subparagraph (b)(12) requires the correctional office to "make the following notifications..." Part (E) is regulating "the agency head," not the correctional officer. This should, at a minimum, be its own Paragraph and should be re-written. Consider whether it belongs in this Rule.

Page 2, Lines 10-12: Paragraph (b) requires "every correctional officer...shall..." Subparagraph (b)(12) requires the correctional office to "make the following notifications..." Part (D) is regulating "the agency head," not the correctional officer. This should, at a minimum, be its own Paragraph and should be re-written. Consider whether it belongs in this Rule.

Page 2, Lines 13-20: Currently is uses a small (f) indicating it is a Paragraph; however, there are not any paragraphs between (b) and (f) and it is justified such that it appears to be a Part. Contextually it appears that this should be its own Paragraph.

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

William W. Peaslee
Commission Counsel

Date submitted to agency: May 24, 2024

1 **12 NCAC 09G .0208 is amended as follows:**

2
3 **12 NCAC 09G .0208 MINIMUM STANDARDS FOR CORRECTIONAL OFFICERS**

4 (a) The requirements of this Rule shall apply to all applicants for certification and shall also apply at all times during
5 which the correctional officer is certified by the Commission.

6 (b) Every correctional officer employed by the North Carolina Department of Adult Correction shall:

7 (1) be a citizen of the United States; ~~States, or have a U.S. Permanent Resident Card (Green Card) and~~
8 ~~have resided in the United States for at least [five (5)]~~ **three (3) years;**

9 (2) be at least ~~20~~ **18** years of age;

10 (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09G .0204;

11 (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09G .0207;

12 (5) have had a medical examination as required by 12 NCAC 09G .0205;

13 (6) have produced a negative result on a drug screen as described in 12 NCAC 09G .0211;

14 (7) have been administered a psychological screening examination in accordance with G.S. 17C-10(c).
15 The psychological screening examination shall be valid for a period of one year from the date on
16 which it was administered;

17 (8) have a background investigation conducted by the Department of Adult Correction, including a
18 personal interview as described in 12 NCAC 09G .0210;

19 (9) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09G .0302;

20 (10) for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily
21 Complete the Department of Adult Correction's departmental firearms training program as
22 prescribed in 12 NCAC 09G .0411. Such firearms training compliance must have occurred within
23 one year of the date of employment and by using the department approved service handgun(s);

24 (11) be of good moral character, including possessing the characteristics of honesty, maturity, discipline,
25 attention to detail, and respect for the rights of others, as more fully discussed and interpreted in: In
26 re Willis 288 N.C. 1.215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216
27 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants
28 for License, 143 N.C.1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924);
29 State v. Benbow, 309 N.C. 538, 308 S.E. 2d 47 (1983); and later court decisions; and

30 (12) make the following notifications:

31 (A) within 30 days of the qualifying event, notify the Criminal Justice Standards Division
32 (Division) and the appointing agency head in writing of all criminal offenses for which the
33 officer is charged or arrested. This shall include traffic offenses identified in the
34 Department of Adult Correction section of the Class B Misdemeanor Manual and offenses
35 of driving under the influence (DUI) or driving while impaired (DWI);

36 (B) within 30 days of the qualifying event, notify the Division and the appointing agency head
37 in writing of all criminal offenses for which the officer pleads no contest, pleads guilty, or

1 of which the officer is found guilty. This shall include traffic offenses identified in the
2 Class B Misdemeanor Manual (correctional officers section) and offense of driving under
3 the influence (DUI) or driving while impaired (DWI);

4 (C) within 30 days of service, officers shall notify the Standards Division of all Domestic
5 Violence Protective Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are
6 issued by a judicial official against the officer;

7 (D) within 30 days of the date the case was disposed of in court, the agency head, provided he
8 or she has knowledge of the officer's arrests or criminal charges and final dispositions, shall
9 also notify the Standards Division of arrests or criminal charges and final disposition;

10 (E) within 30 days of the issuance of all Domestic Violence Protective Orders (G.S. 50B) and
11 Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has knowledge
12 of the order, shall also notify the Standard Division of these orders; and

13 (f) The required notifications in this Rule shall be in writing and shall specify the nature of the
14 offense or order, the court in which the case as handled, the date of the arrest, criminal
15 charge, or service of the order, and the final disposition. The notification shall include a
16 certified copy of the order or court documentation and final disposition from the Clerk of
17 Court in the county of adjudication. The requirements of this Item shall be applicable at all
18 times during which the officer is employed and certified by the Commission and shall also
19 apply to all applicants for certification. Receipt by the Standards Division of a single
20 notification, for the officer or the agency head, shall be sufficient notice for compliance
21 with this Item.

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

24 *Eff. May 1, 2023.*

25 *Amended Eff. July 1, 2024*