

Burgos, Alexander N

From: Liebman, Brian R
Sent: Friday, August 12, 2022 9:46 AM
To: Schilling, Michelle
Cc: Dismukes, Leslie; Burgos, Alexander N
Subject: RE: [External] Requests for Technical Changes

Hi Michelle,

Thanks for sending these over. I will review and get back to you as soon as I can.

Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

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From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Thursday, August 11, 2022 6:23 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Dismukes, Leslie <ldismukes@ncdoj.gov>
Subject: [External] Requests for Technical Changes

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Good afternoon, Brian:

The attachments are for your use.

Michelle



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

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0101

Recommended Change #1: *“With respect to the change in language to “Law Enforcement Officer” throughout the Rules, is this term defined elsewhere? The relevant statutes (17C-2, 17C-6, 17-10) all refer to “Criminal Justice Officer”.*

Response: 12 NCAC 09A .0103(20) defines “Law Enforcement Officer” as an appointee of a Criminal Justice Agency, an agency of the State, or any political subdivision of the State who, by virtue of his or her office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from the title “Law Enforcement Officer” are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E. Law enforcement officers are a subset of “Criminal Justice Officers” as contemplated in N.C.G.S. § 17C-2(3).

Recommended Change #2: *“In (10), line 82, please clarify the term “committed”. Specifically, how it is determined that an officer committed a crime, if he or she was not convicted of it?”*

Response: 12 NCAC 09A .0103(5) defines “Commission of an offense” as a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense.” N.C.G.S. § 17C-6(a)(3) allows the Commission to “certify and recertify, suspend, revoke, or deny, pursuant to the standards that it has established for the purpose.” The Commission has established the “commission of an offense” as one of the standards by which we make certification determinations, which is permissible under the above-mentioned statute.

Recommended Change #3: *“In (13), what is a qualifying event”? Is this term defined elsewhere?”*

Response: “Qualifying event” is not defined elsewhere. The plain language of each subsection of 09B .0101(13)(a) and (b) indicates that “qualifying event” modifies the conduct contained in each subset of the rule. For example, in (a), the qualifying event is charge or arrest for a criminal offense. In (b) the qualifying event is a plea of no contest, guilty, or when an officer is found guilty.

Recommended Change #4: *“Is (13), is there a reason (a) and (b) cannot be combined?”*

Response: 13(a) and (b) have been combined to read: “within ~~30 days~~ five business days of the qualifying event notify the Standards Division and the appointing ~~department~~ agency head in writing of 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 traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);

Recommended Change #5: *“In (13)(c), is there a reason the ‘appointing agency head’ is omitted, despite being in (a) and (b)?”*

Response: This was an oversight. We have added agency head to 13(c).

1 12 NCAC 09B .0101, is amended as published in 36:21 NCR 1688 as follows:

2
3 SUBCHAPTER 09B - STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT: EDUCATION: AND
4 TRAINING

5
6 SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

7
8 12 NCAC 09B .0101 MINIMUM STANDARDS FOR ~~CRIMINAL JUSTICE~~ LAW ENFORCEMENT
9 OFFICERS

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

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

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

4 ~~(h) not having engaged in any conduct that brings into question the truthfulness or credibility~~
5 ~~of the officer, or involves "moral turpitude." "Moral turpitude" is conduct that is contrary~~
6 ~~to justice, honesty, or morality, including conduct as defined in: In re Willis 288 N.C. 1,~~
7 ~~215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6~~
8 ~~S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants~~
9 ~~for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E.~~
10 ~~130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court~~
11 ~~decisions that cite these cases as authority.~~

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

14 ~~(6)(5) have been examined and certified by a licensed surgeon, physician, physician assistant, or nurse~~
15 ~~practitioner to meet physical requirements necessary to fulfill the officer's particular~~
16 ~~responsibilities and shall have produced a negative result on a drug screen administered according~~
17 ~~to the following specifications: as described in 12 NCAC 09C .0310;~~

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

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

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

27 ~~(d) the test threshold values meet the requirements established by the Department of Health~~
28 ~~and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR~~
29 ~~7920 (2017) incorporated by reference, including later amendments and editions found at~~
30 ~~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)~~
31 ~~00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs;~~

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

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

- 1 (7) ~~(6)~~ have been administered a psychological screening examination in accordance with G.S. 17C-
2 10(c). The psychological screening shall be valid for a period of one year from the date on which
3 it was administered.
- 4 ~~(8) (7)~~ have been interviewed personally by the department head or the department head representative or
5 representatives to determine such things as the applicant's appearance, demeanor, attitude, and
6 ability to communicate; and as described in 12 NCAC 09B .0105; and
- 7 ~~(9)~~ have a background investigation conducted by the employing agency, including a personal
8 interview as required by 12 NCAC 09B .0102;
- 9 ~~(10)~~ not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;
- 10 ~~(11)~~ for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily
11 complete the employing agency's in-service firearms training program as prescribed in 12 NCAC
12 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission
13 of the application for appointment to the Commission and must be completed using the agency
14 approved service handgun(s) and any other weapon(s) that the applicant has been issued or
15 authorized to use by the agency; and
- 16 ~~(12)~~ be of good moral character as defined in: : In re Willis, 288 N.C. 1, 215 S.E. 2d 771 *appeal*
17 *dismissed* 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg,
18 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635
19 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308
20 S.E. 2d 647 (1983); and later court decisions.
- 21 ~~(13)(8)~~ make Make the following notifications:
- 22 (a) within ~~30 days~~ five business days of the qualifying event notify the Standards Division
23 and the appointing ~~department~~ agency head in writing of all criminal offenses for which
24 the officer is charged, ~~or arrested, pleads no contest, pleads guilty, or of which the officer~~
25 is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor
26 Manual and offenses of driving under the influence (DUI) or driving while impaired
27 (DWI);
- 28 (b) within ~~30 days~~ five business days of the qualifying event notify the Standards Division
29 and the appointing ~~department~~ agency head in writing of all criminal offenses for which
30 the officer ~~pleads no contest, pleads guilty, or of which the officer is found guilty~~. This
31 ~~shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses~~
32 of driving under the influence (DUI) or driving while impaired (DWI);
- 33 (c) within ~~30 days~~ five business days of service, officers shall notify the Standards Division
34 and the appointing agency head of all Domestic Violence Protective Order (G.S. 50B)
35 and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the
36 officer;

1 (d) within ~~30 days~~ five business days of the date the case was disposed of in court, the
2 ~~department-agency~~ head, provided he or she has knowledge of the officer's arrests or
3 criminal charges and final dispositions, shall also notify the Standards Division of arrests
4 or criminal charges and final disposition;

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

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

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

20
21 *History Note: Authority G.S. 17C-6; 17C-10;*
22 *Eff. January 1, 1981;*
23 *Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995;*
24 *November 1, 1993; July 1, 1990;*
25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
26 *2019;*
27 *Amended Eff. October 1, 2020;*
28 *Temporary Amendment Eff. February 15, 2022.*
29 *Amended Eff. October 1, 2022*

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

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0103

Recommended Change #1: *“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?”*

Response:

132-8.1

121-4

Recommended Change #2: *“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.”*

Response: 12 NCAC 09C .0303(a) identifies the requirement for Probationary Certification before a prospective criminal justice officer may be administered the oath of office, exercise the power of arrest, or commence active service as an officer. 12 NCAC 09C .0303(b) identifies the requirements to be certified as a probationary officer.

1 12 NCAC 09B .0103, is amended as published in 36:21 NCR 1688 as follows:

2
3 12 NCAC 09B .0103 FINGERPRINT CRIMINAL HISTORY RECORD CHECK

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

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

10 (c) The employing agency will receive a report of the results of the fingerprint criminal history record check
11 utilizing fingerprints against State and federal files. ~~Regardless of the disposition of the inquiry, the~~ The employing
12 agency shall ~~permanently~~ retain the results of the fingerprint criminal history record check utilizing fingerprints in
13 the applicant's personnel file. compliance with the North Carolina Department of Natural and Cultural Resources
14 Retention and Disposition Schedule established pursuant to G.S. 121-4 and G.S. 132-8.1. The employing agency
15 shall include the results of the fingerprint criminal history record check with the applications submitted to the
16 Commission.

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

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

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

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

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

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

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

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

6
7 *History Note: Authority G.S. 17C-6; 17C-10;*
8 *Eff. January 1, 1981;*
9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
10 *2019.*
11 *Amended Eff. October 1, 2022*

12

Burgos, Alexander N

Subject: FW: [External] Joint Rules

From: Liebman, Brian R <brian.liebman@oah.nc.gov>

Sent: Wednesday, August 3, 2022 12:44 PM

To: Jones, Sirena C <scjones@ncdoj.gov>

Cc: Dismukes, Leslie <ldismukes@ncdoj.gov>; Schilling, Michelle <mschilling@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Squires, Richard N <rsquires@ncdoj.gov>

Subject: RE: [External] Joint Rules

Thank you!

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Burgos, Alexander N

From: Jones, Sirena <Scjones@ncdoj.gov>
Sent: Wednesday, August 3, 2022 12:31 PM
To: Liebman, Brian R
Cc: Dismukes, Leslie; Schilling, Michelle; Burgos, Alexander N; Squires, Richard N
Subject: [External] Joint Rules
Attachments: 12 NCAC 10B .0301.docx; 12 NCAC 10B .0302.docx; 12 NCAC 10B .0303.docx; 12 NCAC 10B .0304.docx; 12 NCAC 10B .0305.docx; 12 NCAC 10B .0306.docx; 12 NCAC 10B .0307.docx; 12 NCAC 10B .0410.docx

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Good afternoon Mr. Liebman.

Attached you will find the rules filed for the Sheriffs' Commission.

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS
12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT
12 NCAC 10B .0303 FINGERPRINT CRIMINAL HISTORY RECORDS CHECK
12 NCAC 10B .0304 MEDICAL EXAMINATION
12 NCAC 10B .0305 BACKGROUND INVESTIGATION
12 NCAC 10B .0306 EMPLOYMENT INTERVIEW
12 NCAC 10B .0307 CRIMINAL HISTORY RECORD
12 NCAC 10B .0410 AGENCY REPORTING OF DRUG SCREENING RESULTS

Let me know if you have questions.

Sirena



Sirena Jones
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Sheriffs' Standards Division
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1 12 NCAC 10B .0301 is proposed to be amended as follows:

2 12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

3 (a) Every ~~Justice Officer~~ justice officer employed or certified in North Carolina shall:

- 4 (1) be a citizen of the United States;
- 5 (2) be ~~24~~ at least 20 years of age ~~for all deputies and detention officers and [and be at least 18 years of~~
6 ~~age for all telecommunicators; telecommunicators;]~~
- 7 (3) be a high school graduate, or the equivalent ~~(GED); as defined in 12 NCAC 10B .0302;~~
- 8 (4) have been fingerprinted by the employing ~~agency; in the manner provided in 12 NCAC 10B .0303;~~
- 9 (5) have had a medical examination as required by 12 NCAC 10B .0304;
- 10 (6) have produced a negative result on a drug screen ~~administered according to the following~~
11 ~~specifications: as described in 12 NCAC 10B .0410;~~

12 (A) ~~the drug screen shall be a urine test consisting of an initial screening test using an~~
13 ~~immunoassay method and a confirmatory test on an initial positive result using a gas~~
14 ~~chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests as may~~
15 ~~be authorized or mandated by the Department of Health and Human Services for Federal~~
16 ~~Workplace Drug Testing Programs [https://www.samhsa.gov/workplace];~~

17 (B) ~~a chain of custody shall be maintained on the specimen from collection to the eventual~~
18 ~~discarding of the specimen;~~

19 (C) ~~the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine~~
20 ~~(PCP), opiates, and amphetamines or their metabolites;~~

21 (D) ~~the test threshold values established by the Department of Health and Human Services for~~
22 ~~Federal Workplace Drug Testing Programs are incorporated by reference, including~~
23 ~~subsequent amendments and editions. Copies of this information may be obtained from the~~
24 ~~National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857~~
25 ~~[http://www.drugabuse.gov/] at no cost;~~

26 (E) ~~the test results shall be dated no more than 60 days before employment or appointment,~~
27 ~~whichever is earlier;~~

28 (F) ~~the laboratory conducting the test shall be certified for federal workplace drug testing~~
29 ~~programs, and shall adhere to applicable federal rules, regulations, and guidelines~~
30 ~~pertaining to the handling, testing, storage, and preservation of samples; and~~

31 (G) ~~each drug test laboratory report shall be reviewed by a medical review officer (MRO), who~~
32 ~~shall be a licensed physician;~~

33 (7) ~~make the following notifications:~~

34 (A) ~~within five business days, notify the Standards Division and the appointing department~~
35 ~~head in writing of all criminal offenses with which the officer is charged. This shall include~~
36 ~~all criminal offenses except minor traffic offenses. A minor traffic offense means any~~
37 ~~offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20~~

- 1 offenses defined as either a Class A or B Misdemeanor in 12 NCAC 10B .0103(10). The
2 initial notification required must specify the nature of the offense, the date of offense, and
3 the arresting agency. Within five business days, notify the Standards Division of all
4 Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are
5 issued by a judicial official against the justice officer and that provide an opportunity for
6 both parties to be present;
- 7 (B) within 20 days of the date the case was disposed, notify the appointing department head of
8 the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B), and Civil
9 No Contact Orders (G.S. 50C). The department head, provided he or she has knowledge of
10 the officer's charges, Domestic Violence Orders (G.S. 50B), and Civil No Contact Orders
11 (G.S. 50C), shall also notify the Division within 30 days of the date the case or order was
12 disposed of in court.
- 13 (C) within 30 days of the date the case was disposed, notify the Standards Division of the
14 adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B), and Civil
15 No Contact Orders (G.S. 50C);
- 16 (D) the required notifications of adjudication shall specify the nature of the offense, the court
17 in which the case was handled, and the date of disposition and shall include a certified copy
18 of the final disposition from the Clerk of Court in the county of adjudication;
- 19 (E) receipt by the Standards Division of timely notification of the initial offenses charged and
20 of adjudication of those offenses, from either the officer or the department head, shall be
21 sufficient notice for compliance with this Subparagraph;
- 22 (7) have been administered a psychological screening examination as described by G.S. 17E-7. This
23 psychological screening examination shall be valid for a period of one year from the date on which
24 it was administered;
- 25 (8) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal
26 dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325
27 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In
28 re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647
29 (1983); and later court decisions that cite these cases as authority;
- 30 (8) have been interviewed as described in 12 NCAC 10B .0306;
- 31 (9) have a background investigation conducted by the employing agency, including a personal
32 interview prior to employment as required by Rules .0305 and .0306 of this Section. as required by
33 12 NCAC 10B .0305;
- 34 (10) not have committed or been convicted of a crime or crimes specified in 12 NCAC 10B .0307;
- 35 (11) for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily
36 complete the employing agency's in-service firearms training program as prescribed in 12 NCAC
37 10B .2103 and .2104. Such firearms training compliance must have occurred prior to submission of

1 the application for appointment to the Commission and must be completed using the agency
2 approved service handgun(s) and any other weapons(s) that the applicant has been issued or
3 authorized to use by the agency;

4 (12) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal
5 dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325
6 N.C. 658, 386 S.E.2d 174 (1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In
7 re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647
8 (1983); and later court decisions.

9 (13) make the following notifications:

10 (a) within five business days of the qualifying event, notify the Standards Division and the
11 appointing agency head in writing of all criminal offenses for which the officer is charged
12 or arrested. This shall include traffic offenses identified in the Class B Misdemeanor
13 Manual and offenses of driving under the influence (DUI) or driving while impaired
14 (DWI);

15 (b) within five business days of the qualifying event notify the Standards Division and the
16 appointing agency head in writing of all criminal offenses for which the officer pleads no
17 contest, pleads guilty, or of which the officer is found guilty. This shall include traffic
18 offenses identified in the Class B Misdemeanor Manual and offenses of driving under the
19 influence (DUI) or driving while impaired (DWI);

20 (c) within five business days of service, officers shall notify the Standards Division of all
21 Domestic Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C)
22 that are issued by a judicial official against the officer;

23 (d) within five business days of the date the case was disposed of in court, the agency head,
24 provided he or she has knowledge of the officer's arrests or criminal charges and final
25 dispositions, shall also notify the Standards Division of arrests or criminal charges and final
26 disposition;

27 (e) within five business days of the issuance of all Domestic Violence Protective Orders (G.S.
28 50B) and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has
29 knowledge of the order, shall also notify the Standards Division of these orders.

30 (f) The required notifications in this Rule shall be in writing and shall specify the nature of the
31 offense or order, the court in which the case was handled, the date of the arrest, criminal
32 charge, or service of the order, and the final disposition. The notification shall include a
33 certified copy of the order or court documentation and final disposition from the Clerk of
34 Court in the county of adjudication. The requirements of this Item shall be applicable at all
35 times during which the officer is employed and certified by the Commission and shall also
36 apply to all applicants for certification. Receipt by the Standards Division of a single

1 **12 NCAC 10B .0302 is proposed to be amended as follows:**

2

3 **12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT**

4 (a) Each applicant for Justice Officer certification shall furnish documentary evidence of high school, college or
5 university graduation to the employing agency. Documentary evidence of high school graduation consists of diplomas
6 or transcripts from public schools or private schools which meet standards adopted by either the North Carolina
7 Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out of state ~~agency.~~ agency;
8 or such documentation as described in Paragraphs (b), (c), (d) and (e) of this Rule. Documentary evidence of college
9 or university graduation consists of diplomas or transcripts from colleges or universities accredited as such by the
10 Department of Education of the state in which the institution is located, an accredited body recognized by either the
11 U.S. Department of Education or Council for Higher Education Accreditation, or the state university of the state in
12 which the institution is located.

13 (b) High School Diplomas earned through home school programs must be accompanied by a true and accurate or
14 certified transcript and must meet the requirements of Part 3 of Article 39 of Chapter 115C of the North Carolina
15 General Statutes, or a comparable out-of-state statute.

16 (c) Diplomas earned from ~~High Schools~~ high schools or equivalent institutions outside of the United States must be
17 translated into English and be accompanied by an authentic transcript. Transcripts shall be evaluated to ensure they
18 are scholastically comparable to United States curriculum requirements.

19 (d) ~~High School~~ school diplomas earned through on-line or correspondence courses shall be evaluated on a case by
20 case basis. Such diplomas must meet state and local requirements for the jurisdiction from which the diploma was
21 issued.

22 (e) Documentary evidence of having earned a High School Equivalency (HSE) ~~Diploma~~ diploma shall be satisfied
23 by a certified copy of a high school equivalency credential or an adult high school diploma, recognized both of which
24 must be recognized by the U.S. Department of Education, ~~or the state~~ the state Department of Education, ~~in the issuing state or~~
25 educational agency that is authorized in the state to issue a High School Equivalency (HSE) diploma.

26 (f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency
27 examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214.

28

29 *History Note: Authority G.S. 17E-4;*

30 *Eff. January 1, 1989;*

31 *Amended Eff. January 1, 2019; January 1, 2008; August 1, 2000; January 1, 1992; January 1, 1990;*

32 *Readopted Eff. August 1, 2019;*

33 *Amended Eff. January 1, 2023.*

34

35

1 12 NCAC 10B .0303 is proposed to be amended as follows:

2

3 12 NCAC 10B .0303 FINGERPRINT CRIMINAL HISTORY RECORDS CHECK

4 (a) Each applicant for certification shall be fingerprinted. ~~A criminal history records check against State and Federal~~
5 ~~files will be conducted by both the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI)~~
6 ~~based on those prints. Upon receipt from the SBI, the Division shall forward a copy of the results of the criminal~~
7 ~~history records check, to the employing agency which shall be retained in the applicant's personnel file.~~

8 (b) The employing agency shall forward the applicant's fingerprint record to the North Carolina State Bureau of
9 Investigation for criminal history record check utilizing fingerprints against state and federal files. Certifications
10 issued prior to the receipt by the Division of the fingerprint and criminal history records check of state and federal
11 files, as conducted by the SBI and FBI, are conditional. Such conditional certifications may summarily be suspended
12 by the Commission upon receipt from the SBI or FBI of a fingerprint or criminal history records check that indicates
13 that the officer has been convicted of an offense as specified in 12 NCAC 10B .0307.

14 (c) The employing agency will receive a report of the results of the criminal history record check against state and
15 federal files. The employing agency shall retain the results of the criminal history records check utilizing fingerprints
16 in compliance with the North Carolina Department of Natural and Cultural Resources Retention Schedule established
17 pursuant to G.S. 121 and G.S. 132. The employing agency shall include the results of the fingerprint criminal history
18 record check with the applications submitted to the Commission. In compliance with 12 NCAC 10B .0404(a)(1), a
19 justice officer shall not be eligible for general certification and shall remain on probationary certification until the
20 requirements of this Rule have been met.

21 (d) An applicant for certification as a justice officer may not perform any action requiring certification by the
22 Commission prior to the date on which the employing agency receives the report of the result of the criminal history
23 record check unitizing fingerprints.

24

25 *History Note: Authority G.S. 17E-7;*

26 *Eff. January 1, 1989;*

27 *Amended Eff. August 1, 2000; January 1, 1993; January 1, 1992;*

28 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
29 *2018;*

30 *Amended Eff. January 1, 2023.*

31

32

1 **12 NCAC 10B .0304 is proposed to be amended as follows:**

2 **12 NCAC 10B .0304 MEDICAL EXAMINATION**

3 (a) Each applicant for certification or ~~enrollee~~ enrollment in a Commission-certified basic training course shall
4 complete, sign, and date the Commission's Medical History Statement Form (F-1) and shall be examined by a either
5 a physician, surgeon, physician's assistant, nurse ~~practitioner, or other licensed independent~~ practitioner who is
6 licensed to practice in North Carolina or who is authorized to practice medicine in accordance with the rules and
7 regulations of the United States Armed Forces to help determine his or her fitness to carry out the physical
8 requirements of the position of justice officer. ~~Effective January 1, 2018, Telecommunicators who have not previously~~
9 ~~held certification with this Commission, but who have been continuously employed by an entity other than a Sheriff's~~
10 ~~Office, and who have previously provided a valid Medical History Statement (F-1) and Medical Examination Report~~
11 ~~(F-2) for admission into a Commission accredited Telecommunicator Certification Course shall not be required to~~
12 ~~submit additional F-1 and F-2 forms for the purpose of obtaining certification.~~

13 (b) Prior to conducting the examination, the physician, surgeon, physician's assistant, or nurse practitioner, or other
14 licensed independent practitioner shall:

- 15 (1) read the "Medical Screening Guidelines Implementation Manual for Certification of Justice
16 Officers" in the State of North Carolina as published by the North Carolina Department of Justice.
17 Copies of this publication may be obtained at no cost ~~by contacting the North Carolina Department~~
18 ~~of Justice, Sheriffs' Standards Division, PO Box 629, Raleigh, North Carolina 27602; at~~
19 <https://ncdoj.gov/law-enforcement-training/sheriffs/>;
20 (2) read, sign, and date the Medical History Statement Form (F-1); and
21 (3) read the ~~F-2A~~ Instructions to Agency and Examiner for Completion of Medical Examination Report
22 Form (F-2A) attached to the Medical Examination Report Form (F-2).

23 (c) The examining physician, surgeon, physician's assistant, or nurse practitioner, or other licensed independent
24 practitioner shall record the results of the examination on the Medical Examination Report Form (F-2) and shall sign
25 and date the form.

26 (d) The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid for
27 one year after the date the examination was conducted and shall be completed prior to:

- 28 (1) the applicant's beginning the Detention Officer Certification Course, the Basic Law Enforcement
29 Training Course, or the Telecommunicator Certification Course; and
30 (2) ~~the applicant's applying to the Commission for Certification.~~ the agency submission of application
31 for certification to the Commission.

32
33 *History Note: Authority G.S. 17E-7;*
34 *Eff. January 1, 1989;*
35 *Amended Eff. January 1, 1996; January 1, 1993; January 1, 1991; January 1, 1990;*
36 *Temporary Amendment Eff. March 1, 1998;*
37 *Amended Eff. January 1, 2018; January 1, 2009; August 1, 2002; April 1, 2001; August 1, 1998;*

1
2
3
4

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;
Amended Eff. January 1, 2023.

1 **12 NCAC 10B .0305 is proposed to be amended as follows:**

2 **12 NCAC 10B .0305 BACKGROUND INVESTIGATION**

3 (a) ~~Prior to the background investigation conducted by the employing agency to determine the applicant's suitability~~
4 ~~for employment and certification, the applicant shall complete the Commission's Personal History Statement (F-3) to~~
5 ~~provide information regarding his or her former names, education, address(es), family, financial, employment, and~~
6 ~~military history, as well as any prior criminal or civil charges, actions, or behavior. The information provided on this~~
7 ~~form shall serve as a basis for the investigation. The Commission mandated Personal History Statement (F-3)~~
8 ~~submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment. Prior~~
9 ~~to employment, an agency shall complete a background investigation on all applicants for certification. The~~
10 ~~investigation shall examine the applicant's character traits and habits relevant to performance as a justice officer and~~
11 ~~shall determine whether the applicant is of good moral character. This examination includes completion of the~~
12 ~~Commission's Personal History Statement Form (F-3) and Mandated Background Investigation Form (F-8), ensuring~~
13 ~~the proper certification and criminal history record check required by each. The Personal History Statement (F-3) and~~
14 ~~the Mandated Background Investigation (F-8) forms are~~ is available on the Commission's website at
15 <https://ncdoj.gov/law-enforcement-training/sheriffs/all-commission-forms-publications/>.

16 ~~(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of~~
17 ~~appointment, the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all~~
18 ~~changes or a new Personal History Statement (F-3) must be completed.~~

19 ~~(b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form (F-3)~~
20 ~~to provide a basis for the investigation. The agency shall certify that the results of the background investigation are~~
21 ~~consistent with the information provided by the applicant on the Personal History Statement Form (F-3) and give the~~
22 ~~applicant the opportunity to update the Personal History Statement Form (F-3) prior to submission to the Division.~~

23 ~~(c) The employing agency shall ensure the properly notarized and dated signatures are affixed to the Personal History~~
24 ~~Statement (F-3). It shall also certify that the results of the background investigation are consistent with the information~~
25 ~~provided by the applicant on the Personal History Statement (F-3); if not, the employing agency shall provide the~~
26 ~~applicant the opportunity to update the F-3 prior to submission to the Division. The agency shall utilize an investigator~~
27 ~~with prior experience or training in conducting background investigations. The investigator shall document the results~~
28 ~~of the investigation on the Mandated Background Investigation Form (F-8) and shall include in the report of~~
29 ~~investigation:~~

- 30 (1) biographical data;
- 31 (2) family data;
- 32 (3) scholastic data;
- 33 (4) employment data;
- 34 (5) criminal history data;
- 35 (6) interviews with the applicant's references; and

1 (7) a summary of the investigator's findings and conclusions regarding the applicant's moral character
2 known to the agency or listed on the applicant's Personal History Statement (F-3). This
3 documentation shall be included with all other documentation required in 12 NCAC 10B .0408.

4 (d) ~~The employing agency, prior to employment, shall examine the applicant's character traits and habits displayed in~~
5 ~~his or her performance as a justice officer and shall determine whether the applicant is of good moral character as~~
6 ~~defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-~~
7 ~~mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator. The Background~~
8 ~~Investigation Form (F-8) is available on the Commission's website. The employing agency shall include a signed and~~
9 ~~notarized Release Authorization Form that authorizes the Division staff to obtain documents and records pertaining~~
10 ~~to the applicant for certification that may be required in order to determine whether certification may be granted.~~

11 (e) ~~The Background Investigation Form (F-8) shall include records checks from:~~

- 12 (1) ~~a Statewide search of the Administrative Office of the Courts (AOC) computerized system;~~
- 13 (2) ~~the national criminal record database accessible through the Division of Criminal Information (DCI)~~
14 ~~network;~~
- 15 (3) ~~the North Carolina Division of Motor Vehicles, if the applicant has ever possessed a driver's license~~
16 ~~issued in North Carolina; and~~
- 17 (4) ~~out of state motor vehicles check obtained through the Division of Criminal Information or obtained~~
18 ~~through the any other state's Division of Motor Vehicles if the applicant held a license in that state(s)~~
19 ~~within the 10 year period prior to the date of appointment.~~

20 (f) ~~The background investigation must also include records checks from jurisdictions where the applicant resided~~
21 ~~within the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:~~

- 22 (1) ~~Where the applicant resided in jurisdictions in North Carolina, Clerk of Court records checks shall~~
23 ~~be acceptable;~~
- 24 (2) ~~Where the applicant resided in another country, an Interpol records check shall be acceptable~~
25 ~~provided the country is a member of Interpol; or if the applicant was in the United States military,~~
26 ~~a military records check shall be acceptable; or if neither, efforts shall be made and documented to~~
27 ~~attempt to obtain a records check from the country and submitted if available; and~~
- 28 (3) ~~Where the applicant resided in a state other than North Carolina, a records check through the~~
29 ~~Division of Criminal Information using the Out of State Computer Name Query (IQ) shall be~~
30 ~~acceptable provided the state will respond to that type of inquiry. If not, then either a records check~~
31 ~~response from both the municipality, city, or town where the applicant resided and the county wide~~
32 ~~Sheriff's Office or Police Department obtained through traditional correspondence, or a records~~
33 ~~check from the appropriate county wide or state wide record holding agency shall be acceptable.~~

34 (g) ~~If the applicant had prior military service, the Background Investigation must also include a copy of the applicant's~~
35 ~~DD214 that shows the characterization of discharge for each discharge that occurred and military discipline received,~~
36 ~~if any. If the DD214 indicates a discharge characterization of any type other than Honorable, then a military records~~
37 ~~check shall also be required.~~

1 ~~(h) All records checks shall be performed on each name by which the applicant for certification has ever been known~~
2 ~~since the age of 12. If the applicant has had an official name change that occurred after the applicant had reached the~~
3 ~~age of 12 years of age, then the name change shall be documented.~~

4 ~~(i) The employing agency shall forward to the Division certified copies of any criminal charge(s) and disposition(s)~~
5 ~~known to the agency or listed on the applicant's Personal History Statement (F-3). The employing agency shall explain~~
6 ~~any charges or other violations that may result from the records checks required in Paragraph (e) of this Section that~~
7 ~~do not pertain to the applicant for certification. This documentation shall be included with all other documentation~~
8 ~~required in 12 NCAC 10B .0408.~~

9 ~~(j) The employing agency shall include a signed and notarized Release Authorization Form that authorizes the~~
10 ~~Division staff to obtain documents and records pertaining to the applicant for certification that may be required in~~
11 ~~order to determine whether certification may be granted.~~

12 ~~(k)(e)~~ (e) The employing agency shall provide the results of a completed and processed form AOC-CR-280, Law
13 Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-145.8A
14 or 15A-146, for each applicant presented for certification. The AOC-CR-280 form is available on the Commission's
15 website.

16
17 *History Note: Authority G.S. 17E-7;*
18 *Eff. January 1, 1989;*
19 *Amended Eff. January 1, 2010; January 1, 2009; January 1, 2007; August 1, 2002; January 1, 1994;*
20 *January 1, 1993; January 1, 1992; January 1, 1990;*
21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
22 *2018;*
23 *Amended Eff. January 1, 2023;*

1 **12 NCAC 10B .0306 is proposed to be amended as follows:**

2 **12 NCAC 10B .0306 EMPLOYMENT INTERVIEW**

3 (a) Prior to employment, the employing agency shall conduct an interview of the applicant to determine the applicant's
4 abilities and potential for success as a justice officer.

5 (b) The sheriff or agency head may conduct the interview ~~personally, or he may delegate~~ personally or by delegating
6 the responsibility to a qualified staff member or panel.

7

8 *History Note: Authority G.S. 17E-7;*

9 *Eff. January 1, 1989;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
11 *2018;*

12 *Amended Eff. January 1, 2023.*

13

14

1 **12 NCAC 10B .0307 is proposed to be amended as follows:**

2 **12 NCAC 10B .0307 CRIMINAL HISTORY RECORD**

3 (a) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified
4 in North Carolina shall not have committed or been convicted by a local, state, federal or military court of:

5 (1) a felony; ~~or~~

6 (2) a crime for which the punishment could have been imprisonment for more than two ~~years.~~ years;

7 ~~(b) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified
8 in North Carolina should not have committed or been convicted by a local, state, federal or military court of:~~

9 (3) a crime or unlawful act defined as a "Class B Misdemeanor" and which occurred after the date of
10 appointment;

11 ~~(4)~~(4) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the
12 date of appointment; or

13 ~~(2)~~(5) four or more crimes or unlawful acts defined as "Class B Misdemeanors" regardless of the date of
14 conviction or commission; or

15 ~~(3)~~(6) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the applicant can
16 be employed if the last conviction or commission occurred more than two years prior to the date of
17 appointment; or

18 ~~(4)~~(7) a combination of four or more "Class A or B Misdemeanors" regardless of the date.

19 (8) for personnel who carry a firearm in the execution of their duties, an offense that, pursuant to 18
20 USC 922 (g)(8), would prohibit the possession of a firearm or ammunition.

21 ~~(e)~~(b) The requirements of this Rule shall be applicable at all times during which the officer is certified by the
22 Commission and shall also apply to all applications for certification.

23

24 *History Note: Authority G.S. 17E-7;*

25 *Eff. January 1, 1989;*

26 *Amended Eff. August 1, 2002; January 1, 1996; January 1, 1993; January 1, 1992; January 1, 1991;*

27 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,
28 2018;*

29 *Amended Eff. January 1, 2023.*

30

31

1 12NCAC 10B .0410 is proposed to be amended as follows:

2

3 **12 NCAC 10B .0410 AGENCY REPORTING OF DRUG SCREENING RESULTS**

4

5 (a) Every justice officer shall be examined and certified by a licensed surgeon, physician, physician assistant, nurse
6 practitioner or other licensed independent practitioner to meet physical requirements necessary to fulfill the officer's
7 particular responsibilities and shall have produced a negative result on a drug screen administered according to the
8 following specifications:

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

14 (b) a chain of custody shall be maintained on the specimen from collection to the eventual
15 discarding of the specimen;

16 (c) the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine
17 (PCP), opiates, and amphetamines or their metabolites;

18 (d) the test threshold values meet the requirements established by the Department of Health
19 and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR
20 7920 (2017) incorporated by reference, including later amendments and editions found at
21 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)
22 00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs;

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

25 (f) the laboratory conducting the test shall be certified for federal workplace drug testing
26 programs, and shall adhere to applicable federal rules, regulations, and guidelines
27 pertaining to the handling, testing, storage, and preservation of samples.

28 ~~(a)~~(b) Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports
29 telecommunicators to the Commission for certification, shall report in writing to the Division all refusals and all
30 positive results of drug screening obtained from applicants and lateral transfers pursuant to 12 NCAC 10B .0301(6)
31 unless transfers. If the positive result has been explained to the satisfaction of the agency's medical review officer
32 officer, who shall be a licensed physician. physician, the positive results are not required to be reported.

33 ~~(b)~~(c) Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports
34 telecommunicators to the Commission for certification, and that conducts a drug screen for in-service officers, shall
35 report in writing positive results or refusals to submit to an in-service drug screening to the Sheriffs' Standards
36 Division within 30 days of the positive result or refusal, unless the positive result has been explained to the satisfaction
37 of the agency's medical review officer, who shall be a licensed physician to the extent the drug screen conducted

1 conforms to the specifications of ~~provided the drug screen conducted conforms to~~ 12 NCAC 10B 0410.0301(6)(a),
2 ~~(b), (c), (d) and (f).~~
3 ~~(e)~~(d) For reporting purposes, a result ~~will be~~ is considered "positive" only in the cases where the drug screen reveals
4 the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department
5 of Health and Human Services for Federal Workplace Drug Testing Programs and adopted by reference in 12 NCAC
6 10B .0410. ~~.0301(6).~~

7
8 *History Note: Authority G.S. 17E-4; 17E-7;*
9 *Eff. July 1, 1990;*
10 *Recodified from 12 NCAC 10B .0409 Eff. January 1, 1991;*
11 *Amended Eff. January 1, 2013;*
12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
13 *2018.*
14 *Amended Eff. January 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] RE: CJETS Request for Changes - August 2022 RRC

From: Squires, Richard <RSQUIRES@ncdoj.gov>

Sent: Wednesday, August 3, 2022 11:23 AM

To: Dismukes, Leslie <ldismukes@ncdoj.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>; Jones, Sirena C <scjones@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>

Subject: RE: [External] RE: CJETS Request for Changes - August 2022 RRC

CAUTION: External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Sirena,

Can you provide the rules for Brian.

Richard



Richard Squires
Director
Sheriffs' Standards Division
(919) 662-4375 (Office)
(919) 779-8213 (Main)
(919) 662-4515 (fax)
rsquires@ncdoj.gov
1700 Tryon Park Drive
Raleigh, North Carolina 27610
ncdoj.gov

Please note messages to or from this address may be public records.

From: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>

Sent: Wednesday, August 3, 2022 11:13 AM

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Squires, Richard <RSQUIRES@ncdoj.gov>

Subject: RE: [External] RE: CJETS Request for Changes - August 2022 RRC

Hi Brian, I'm copying Director Squires so that he can provide you with the versions of the rule that went to the RRC. We completed them both at the same time, but because the meeting schedules of the two Commissions differ we are likely on different timetables for RRC approval.

Thanks,
Leslie

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, August 2, 2022 5:11 PM
To: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: CJETS Request for Changes - August 2022 RRC

Hi all,

Would someone be willing to point me in the direction of which Sheriff's rules the CJETS rules need to mirror?

Thanks!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984)236-1948
brian.liebman@oah.nc.gov

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

From: Liebman, Brian R
Sent: Thursday, July 28, 2022 3:13 PM
To: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Schilling, Michelle
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: CJETS Request for Changes - August 2022 RRC

Hi Leslie,

Unfortunately I am unavailable today for a call, and I don't think tomorrow looks good either, but I can probably do something next week. As to the Sheriff's rules, I don't have them for review, so I am unsure what another counsel might have suggested. If they need to be identical, then let me know the equivalent rules and I'll look into it. It'd probably be best to do that before we speak.

Thanks,
Brian

Brian Liebman
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From: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>
Sent: Thursday, July 28, 2022 1:30 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: [External] RE: CJETS Request for Changes - August 2022 RRC

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Thanks Brian, can we schedule a meeting to discuss? I have a few concerns I'd like to talk through and also want to flag for you that – per SB300 – we have had to re-write these rules to be identical to those of Sheriffs. Have you made the same changes to their rules that are moving through the process?

Let us know what works for you to meet and discuss –

Thanks,
Leslie

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Thursday, July 28, 2022 1:10 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: CJETS Request for Changes - August 2022 RRC

Good afternoon,

I'm the attorney who reviewed the Rules submitted by CJETS for the August 2022 RRC meeting. Note I've reviewed the 2 rules from 09B and the 1 rule from 09G that is on follow up.

The RRC will formally review these Rules at its meeting on Thursday, August 18, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules to me via email, no later than 5 p.m. on Thursday, August 11, 2022.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

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