

Burgos, Alexander N

From: Peaslee, William W
Sent: Friday, November 22, 2024 2:54 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09C .0104
Attachments: 2024.12 CJETS Request for Changes 12 NCAC 09C .0104.docx

Good afternoon,

Attached please find the request for changes for the above captioned rule set to be reviewed by the Rules Review Commission at its December meeting.

As always if you have any questions please feel free to contact me.

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road
Raleigh NC, 27609
(984) 236-1939
Bill.Peaslee@oah.nc.gov

Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

From: Peaslee, William W
Sent: Wednesday, December 4, 2024 3:57 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: 12 NCAC 09B .0405
Attachments: 2024.12 CJETS Request for Changes 12 NCAC 09B .0405.docx

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Sent: Wednesday, December 4, 2024 3:39 PM
To: Schilling, Michelle
Cc: Burgos, Alexander N
Subject: Perplexity AI's version of 12 NCAC 09B .0405 (f)

Academic Performance Requirements

Trainees must demonstrate proficiency in academic tests by achieving a minimum score of 70% on each assessment. If a trainee fails to meet this standard, the following procedures apply:

Remediation and Reexamination Process

1. **Initial Failure:** Upon failing a test, the trainee will undergo remediation, which involves re-teaching of concepts and skills in the specific topical area(s) where the passing score was not achieved.
2. **Reexamination Opportunity:** Following remediation, the trainee will have one additional opportunity to retake the test.
3. **Limit on Failures:** A trainee is permitted to fail, undergo remediation, and retake exams in a maximum of seven topical areas.

Dismissal Policy

If a trainee fails an eighth topical area test:

1. No further remediation or reexamination will be allowed.
2. The trainee will be immediately dismissed from the current course.
3. To continue training, the trainee must complete a subsequent delivery of the Basic Law Enforcement Training (BLET) program in its entirety.

This revised structure maintains the original content while presenting it in a more organized, clear, and professional manner.

Per our telephone conversation, obviously it cannot be formatted like this, but isn't this much clearer?

William W. Peaslee
Rules Review Commission Counsel / Legislative Liaison
Office of Administrative Hearings
1711 New Hope Church Road

Burgos, Alexander N

Subject: FW: [External] 12 NCAC 09C .0104

From: Schilling, Michelle <mschilling@ncdoj.gov>

Sent: Thursday, December 5, 2024 5:02 PM

To: Peaslee, William W <bill.peaslee@oah.nc.gov>; Rules, Oah <oah.rules@oah.nc.gov>

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

Subject: Re: [External] 12 NCAC 09C .0104

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Thank you.



MICHELLE SCHILLING

Deputy Director

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MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

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From: Peaslee, William W <bill.peaslee@oah.nc.gov>

Sent: Thursday, December 5, 2024 4:58 PM

To: Rules, Oah <oah.rules@oah.nc.gov>

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>

Subject: FW: [External] 12 NCAC 09C .0104

Good afternoon,

It is my intention to recommend approval of the above captioned revised rule attached hereto.

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From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Thursday, December 5, 2024 3:18 PM
To: Peaslee, William W <bill.peaslee@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dismukes, Leslie <ldismukes@ncdoj.gov>; Draper, Steven <SDRAPER@NCDOJ.GOV>
Subject: [External] 12 NCAC 09C .0104

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Good afternoon,

The attached rule and recommended change responses are submitted for your review and approval.

Michelle



MICHELLE SCHILLING

Deputy Director

Criminal Justice Standards Division

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12 NCAC 09C .0104 is adopted, with changes, as published in 39:02 NCR 66-67 as follows

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

(a) For all criminal justice agencies in the State that employ personnel certified by the North Criminal Justice Education and Training Standards Commission, the Agency head shall submit the Critical Incident Report, (F-27), to the Criminal Justice Standards Division no later than 30 days after making the determination that an incident involving any use of force by a law enforcement officer that resulted in death or serious bodily injury to a person has occurred. The 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) In addition to the reporting in paragraph (a) of this rule, the Agency head for any law enforcement criminal justice 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)]~~ (c) Within thirty days of receipt of an F-27, the ~~[The]~~ Division shall give written 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 notifying the officer that, if the officer disputes being involved in a critical incident, the officer has a right to request a hearing in superior court for a determination of whether the officer's involvement ~~[was]~~ should be properly placed in the database. The notice will inform the officer that the Division will not place the officer's involvement in the database if it receives notice from the officer within thirty days of receipt of notice that the officer has requested a hearing in superior court. If the officer requests a hearing in superior court, the Division will not place the officer's involvement in the database until a determination is made by superior court that the officer's involvement would be properly placed in the database. If, subsequent to the placement of an officer's involvement in the database, a superior

1 court determines that the officer's involvement is not properly placed, the Division will remove the officer's
2 involvement from the database.

3
4 *History Note: Authority G.S. 17C-15; G.S. 17-6*
5 *Eff. January 1, 2025*

Responses to Recommended Rule Changes for 12 NCAC 09C .0104

RULE CITATION: 12 NCAC 09C .0104

DEADLINE FOR RECEIPT: December 6, 2024

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

Recommended Rule Change:

Generally, to the Rule: Paragraph (a) refers to “criminal justice agencies” (which is a defined term) and Paragraph (b) refers to “law enforcement [agencies.]” If these are the same thing, be consistent in terms. If they are different, explain the difference.

Page 1, Line 14: 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?

Response: Language clarified.

Recommended Rule Change:

Page 1, Lines 24-25, Paragraph ©: This nearly verbatim from the G.S. 17C -15©. Why is the Paragraph necessary pursuant to G.S. 150B-(a)(3)?

Response:

Agreed. Language removed.

Recommended Rule Change:

Page 1, Lines 26-27, Paragraph (d): This nearly verbatim from the G.S. 17C -15(a). Why is the Paragraph necessary pursuant to G.S. 150B-(a)(3)?

Response:

Agreed. Language removed.

Recommended Rule Change:

Page 1, Line 27: The Commission has not defined “critical incident data.” Accordingly, the directive to the Division is ambiguous. Or is (a)(9) the critical incident data? If so, label it as such.

Response: Language clarified.

Recommended Rule Change:

Page 1, Line 28, Paragraph (e): What form of notice? In writing? When must notice be provided? Within five days of The Divisions receipt of the F-27?

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Response:

Changed to reflect written notice and a timeframe for providing the notice, which will occur prior to adding the officer to the database.

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Recommended Rule Change:

Page 1, Line 31: Explain the authority to enter the officer's name in the database prior to the determination by the Superior Court? In short, the instructions are an incorrect statement of G.S. 17C-15 that an officer a right to a superior court determination "prior to being placed in the database." On line 31, should "was" be "should be"?

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Response:

The statute provides that an officer has a right prior to being placed in the database to request a hearing. The statute establishes no procedures or time frames. The proposed rule notifies the officer of the right, and gives the officer thirty days to request a hearing, which is a normal timeframe for legal proceedings such as an OAH hearing request or answering a suit. If a hearing is requested, the officer is not placed in the database until the superior court makes a determination.

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If no hearing is requested, then there is no reason to think the officer is invoking the right to a hearing. However, the statute also says the superior court will determine whether the "officer's involvement was properly placed in the database." NCGS 17C-15(d) (emphasis added). Accordingly, the rule makes clear that an officer may request a hearing at any time, even after being placed in the database, and if a superior court finds the officer's involvement was not properly placed, the Division will remove same.

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3. **Limit on Failures:** A trainee is permitted to fail, undergo remediation, and retake exams in a maximum of seven topical areas.

Dismissal Policy

If a trainee fails an eighth topical area test:

1. No further remediation or reexamination will be allowed.
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This revised structure maintains the original content while presenting it in a more organized, clear, and professional manner.

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5 *Eff. January 1, 2025*

Responses to Recommended Rule Changes for 12 NCAC 09C .0104

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