

Burgos, Alexander N

Subject: FW: [External] 12 NCAC 09A .0103, 09B .0102 and 09B .0104

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Wednesday, September 14, 2022 9:52 AM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dismukes, Leslie <ldismukes@ncdoj.gov>

Subject: RE: [External] 12 NCAC 09A .0103, 09B .0102 and 09B .0104

Everything looks good except 09C .0310. A procedure cannot be enforced by Commission policy or guideline unless it is in a rule. Also, is it not sufficient to say “the agency needs a firmly established chain of custody procedure”. The procedure or minimum standard should be put in the rule if it is to be enforceable.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

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Burgos, Alexander N

Subject: FW: [External] 12 NCAC 09A .0103, 09B .0102 and 09B .0104
Attachments: 12 NCAC 09B .0105 with recommended changes.doc.docx; 12 NCAC 09B .0106 with recommended changes.docx; 12 NCAC 09B .0111 with recommended changes.docx; 12 NCAC 09C .0310 with recommended changes.docx; 12 NCAC 09B .0104 with recommended changes.docx; 12 NCAC 09B .0114 with recommended changes.docx

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Tuesday, September 13, 2022 4:28 PM
To: Duke, Lawrence <lawrence.duke@oah.nc.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dismukes, Leslie <ldismukes@ncdoj.gov>
Subject: RE: [External] 12 NCAC 09A .0103, 09B .0102 and 09B .0104

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Good afternoon,

The amended rules are attached for your review.

Please let me know if you have any questions.

Michelle



MICHELLE SCHILLING
Deputy Director
Criminal Justice Standards Division
Office: (919) 779-8205
Fax: (919) 779-8210
MSchilling@ncdoj.gov
1700 Tryon Park Drive
Raleigh, NC 27602-0149
ncdoj.gov

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1 12 NCAC 09B .0104 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0104 MEDICAL EXAMINATION**

4 (a) Each applicant for ~~employment as a criminal justice officer~~ certification or enrollment in a basic law enforcement
5 training course shall complete ~~complete, sign, and date~~ the Commission's Medical History Statement Form (F-1)
6 ~~within one year prior to employment by the employing agency and shall be examined by either a surgeon, physician,~~
7 ~~physician assistant, or nurse practitioner who is licensed to practice medicine in North Carolina or by a surgeon,~~
8 ~~physician, physician assistant, or nurse practitioner authorized to practice medicine in~~ [accordance with the rules and
9 regulations of] the United States Armed Forces, as outlined in 10 U.S. Code § 1094, to help determine his or her the
10 ~~applicant's fitness in to carry~~ carrying-out the physical requirements of the ~~criminal justice officer position.~~ position
11 of law enforcement officer.

12 (b) Prior to being examined, the applicant shall provide the examining surgeon, physician, physician or nurse
13 practitioner with: ~~The examining [Prior to conducting the examination, the surgeon, physician, physician assistant, or~~
14 ~~nurse practitioner shall:]~~ shall record the results of the examination on the Commission's Medical Examination Report
15 Form and shall record any evidence of past or present defects, diseases, injuries, operations.

16 ~~[(1) — the "Medical Screening Guidelines for the Certification of Criminal Justice Officers in North~~
17 ~~Carolina" as published by the North Carolina Department of Justice. Copies of this publication may~~
18 ~~be obtained at no cost at <https://ncdoj.gov/law-enforcement-training/criminal-justice/>]~~

19 ~~[(2)] (1)~~ the Medical History Statement Form (F-1), which must be read, completed, and signed; and

20 ~~[(3)] (2)~~ the Instructions to Agency and Examiner for Completion of Medical Examination Report (F-2A)
21 Form attached to the Medical Examination Report Form (F-2).

22 (c) The "Medical Screening Guidelines for the Certification of Criminal Justice Officers in North Carolina" as
23 published by the North Carolina Department of Justice may be obtained for use by the examining physician, surgeon,
24 physician's assistant, or nurse practitioner, at no cost, at <https://ncdoj.gov/law-enforcement-training/criminal-justice/>.

25 ~~[(e)] (d)~~ The examining physician, surgeon, physician's assistant, nurse practitioner, shall record the results of the
26 examination on the Medical Examination Report Form (F-2) and shall sign and date the form. An applicant for
27 employment as a law enforcement officer seeking general certification may not be employed or placed in a sworn law
28 enforcement position prior to the date on which the employing agency receives the report of the results of the medical
29 examination unless all of the following requirements are met:

30 (1) — ~~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 a report to the Commission~~
33 ~~of the completion of the drug screening of the individual being issued general certification.~~

34 (2) — ~~The requirements of this Paragraph shall be met within 60 days of the law enforcement officer being~~
35 ~~issued general certification.~~

36 ~~[(d)] (e)~~ The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid for
37 one year after the date the examination was conducted and shall be completed prior to:

1 (1) the applicant's beginning the Basic Law Enforcement Training Course; and

2 (2) the agency submission of application for certification to the Commission.

3

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

5 *Eff. January 1, 1981;*

6 *Amended Eff. April 1, 2018; October 1, 2017; November 1, 1993; February 1, 1991; March 1, 1990;*

7 *April 1, 1985;*

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

9 *2019.*

10 *Amended Eff. October 1, 2022*

1 12 NCAC 09B .0105 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0105 QUALIFICATIONS APPRAISAL EMPLOYMENT INTERVIEW**

4 (a) Prior to ~~employing any applicant for employment~~ employment, as a criminal justice officer, the employing agency
5 shall conduct an interview of the applicant to ~~determine~~ evaluate the applicant's knowledge, skills, and abilities ~~[and]~~
6 potential for demonstrating potential for success as a ~~criminal justice~~ law enforcement officer.

7 (b) The ~~Department~~ Agency head ~~should appoint a panel of staff members to sit as a unit with the Department head~~
8 ~~during the interview. However, the Department head may conduct the interview personally or by delegating~~ delegate
9 the responsibility to a qualified staff member or panel, who is competent, whether by education, training, or
10 experience, to conduct the employment interview. The respective agency head identifies those individuals he or she
11 deems "qualified".

12 (c) ~~The agency may use the method of interviewing and recording the interview it deems most appropriate to its~~
13 ~~needs. The Commission's Qualifications Appraisal Interview form may be used as a guide for the interviewer.~~

14
15 *History Note: Authority G.S. 17C-6; 17C-10;*

16 *Eff. January 1, 1981;*

17 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
18 *2019.*

19 *Amended Eff. October 1, 2022*

1 12 NCAC 09B .0106 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS**

4 (a) Each applicant for ~~employment as a certification as a criminal justice~~ law enforcement officer shall furnish ~~to the~~
5 employing agency documentary evidence ~~that the applicant has met the educational requirements for the criminal~~
6 justice field of expected employment. of high school, college, or university graduation to the employing agency.

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

14 (b) High school diplomas earned through home school programs must be accompanied by a true and accurate or
15 certified transcript and must meet the requirements of Part 3 of Article 39 of Chapter 115C of the North Carolina
16 General Statutes, or a comparable out-of-state statute. Documentary evidence of educational requirements shall consist
17 of official transcripts of courses completed or diplomas received from a school that meets the approval guidelines of
18 either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable
19 out of state agency. Documentary evidence of college or university graduation consists of diplomas or transcripts
20 from colleges or universities accredited by the Department of Education of the state in which the institution is located,
21 from an accredited body recognized by either the U.S. Department of Education or the Council for Higher Education
22 Accreditation, or from the state university of the state in which the institution is located. High school diplomas earned
23 through correspondence enrollment in an entity that charges a fee and requires the individual to complete little or no
24 education or coursework to obtain a high school diploma shall not be recognized toward these minimum educational
25 requirements.

26 (c) Diplomas earned from high schools or equivalent institutions outside of the United States must be translated into
27 English and be accompanied by an authentic transcript. ~~The Division's staff shall evaluate the transcripts~~ ~~Transcripts~~
28 shall be evaluated] to ensure they are scholastically comparable to United States curriculum requirements.
29 Documentary evidence of having received a high school equivalency credential from the issuing state shall be satisfied
30 by a certified copy of a high school equivalency credential from the issuing state.

31 (d) The Division's staff shall evaluate high [High] school diplomas earned through on-line [or correspondence courses
32 shall be evaluated] on a case by case basis. Such diplomas must meet state and local requirements for the jurisdiction
33 from which the diploma was issued.

34 (e) Documentary evidence of having earned a High School Equivalency (HSE) diploma shall be satisfied by a certified
35 copy of a high school equivalency credential or an adult high school diploma, both of which must be recognized by
36 the U.S. Department of Education, the state Department of Education, or educational agency that is authorized in the
37 state to issue High School Equivalency (HSE) diplomas.

1 (f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency
2 examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214,
3 Certificate of Release from Active Duty.

4
5 *History Note: Authority G.S. 17C-6; 17C-10;*
6 *Eff. January 1, 1981;*
7 *Amended Eff. April 1, 2018; February 1, 2016; November 1, 2015; June 1, 2012; August 1, 2000;*
8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
9 *2019.*
10 *Amended Eff. October 1, 2022*

1 12 NCAC 09B .0111 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0111 CRIMINAL HISTORY RECORD MINIMUM STANDARDS FOR LAW**
4 **ENFORCEMENT OFFICERS**

5 (a) Consistent with and subject to the requirements of 12 NCAC 09A .0204, every law enforcement officer employed
6 or certified in North Carolina shall not have committed or been convicted by a local, state, federal, or military court
7 of. In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law
8 enforcement officer employed by an agency in North Carolina shall:

9 (1) ~~not have committed or been convicted of:~~

10 (1) ~~(a)~~ a felony;

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

12 (3) ~~(c)~~ a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the
13 date of ~~application~~ certification for employment;

14 (4) a crime or unlawful act defined as a "Class B Misdemeanor" occurring after the date of certification;

15 (5) ~~(d)~~ four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of
16 conviction;

17 (6) ~~(e)~~ four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may
18 be employed if the last conviction occurred more than two years prior to the date of certification
19 application for employment; or

20 (7) ~~(f)~~ a combination of four or more [~~"Class A or B Misdemeanors"~~] Class A Misdemeanor or Class B
21 Misdemeanor regardless of the date;

22 (8) for personnel who are authorized to carry a firearm in the execution of their duties, an offense that,
23 pursuant to 18 USC 922(g)(8), would prohibit the possession of a firearm or ammunition.
24 ammunition;

25 (b) 12 NCAC 09A .0103(5) defines "Commission of an offense" as a finding by the North Carolina Criminal Justice
26 Education and Training Standards Commission or equivalent regulating body from another state that a person
27 performed the acts necessary to satisfy the elements of a specified criminal offense.

28 ~~[(b)]~~ (c) The requirements of this Rule shall be applicable at all times during which the officer is certified by the
29 Commission and shall also apply to all applications for certification.

30 (2) ~~be a high school, college, or university graduate or have passed the General Educational~~
31 ~~Development Test indicating high school equivalency; and~~

32 (3) ~~satisfactorily complete the employing agency's in service firearms training program as prescribed~~
33 ~~in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to~~
34 ~~submission of the application for appointment to the Commission and must be completed using the~~
35 ~~agency approved service handgun(s) and any other weapon(s) that the applicant has been issued or~~
36 ~~authorized to use by the agency.~~

1 *History Note: Authority G.S. 17C-6; 17C-10;*
2 *Eff. January 1, 1981;*
3 *Amended Eff. November 1, 2015; April 1, 2009; August 1, 1998; December 1, 1987; October 1,*
4 *1985; January 1, 1985; January 1, 1983;*
5 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
6 *2019.*
7 *Amended Eff. October 1, 2022*
8

1 12 NCAC 09B .0114 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0114 MINIMUM STANDARDS FOR LOCAL CONFINEMENT PERSONNEL**

4 ~~In addition to the requirements for criminal justice law enforcement officers contained in Rule .0101 of this Section,~~

5 **(a)** Every officer, supervisor, or administrator employed by a local confinement facility in North Carolina shall:

6 ~~(1) not have committed or been convicted of:~~

7 ~~(a) a felony; or~~

8 ~~(b) a crime for which the punishment could have been imprisonment for more than two years;~~

9 ~~or~~

10 ~~(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period~~
11 ~~prior to the date of application for employment; or~~

12 ~~(d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the~~
13 ~~date of conviction; or~~

14 ~~(e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the~~
15 ~~applicant may be employed if the last conviction occurred more than two years prior to the~~
16 ~~date of application for employment;~~

17 ~~(2) be a high school, college, or university graduate or have passed the General Educational~~
18 ~~Development Test indicating high school equivalency.~~

19 (1) be a citizen of the United States;

20 (2) be at least 20 years of age;

21 (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09B .0106;

22 (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;

23 (5) have had a medical examination as required by 12 NCAC 09B .0104;

24 (6) have produced a negative result on a drug screen as described in 12 NCAC 09C .0310;

25 (7) have been administered a psychological screening examination in accordance with G.S. 17C-10(c).

26 The psychological screening examination shall be valid for a period of one year from the date on
27 which it was administered.

28 (8) have been interviewed as described in 12 NCAC 09B .0105; **and**

29 (9) have a background investigation conducted by the employing agency, including a personal interview
30 as required by 12 NCAC .09B .0102;

31 (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;

32 (11) be of good moral character as defined in : In re Willis 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed
33 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658,
34 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re
35 Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647
36 (1983); and later court decisions.

37 (12) Make the following notifications:

- 1 (a) within ~~30~~ 5 days of the qualifying event, notify the Standards Division and the appointing
2 agency head in writing of all criminal offenses for which the officer is charged or arrested.
3 This shall include traffic offenses identified in the Class B Misdemeanor Manual and
4 offenses of driving under the influence (DUI) or driving while impaired (DWI);
- 5 (b) within ~~30~~ 5 days of the qualifying event, notify the Standards Division and the appointing
6 agency head in writing of all criminal offenses for which the officer pleads no contest,
7 pleads guilty or of which the officer is found guilty. This shall include traffic offenses
8 identified in the Class B Misdemeanor Manual and offenses of driving under the influence
9 (DUI) or driving while impaired (DWI);
- 10 (c) within ~~30~~ 5 days of service, officers shall notify the Standards Division of all Domestic
11 Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are
12 issued by a judicial official against the officer;
- 13 (d) within ~~30~~ 5 days of the date the case was disposed of in court, the agency head, provided
14 he or she has knowledge of the officer's arrests or criminal charges and final dispositions,
15 shall also notify the Standards Division of arrests or criminal charges and final disposition;
16 and
- 17 (e) within ~~30~~ 5 days of the issuance of all Domestic Violence Protective Orders (G.S. 50B)
18 and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has
19 knowledge of the order, shall also notify the Standards Division of these orders.

20 ~~(13) {(4)}~~ The required notifications in this Rule shall be in writing and shall specify the nature of the
21 offense or order, the court in which the case was handled, the date of the arrest, criminal charge, or
22 service of the order, and the final disposition. The notification shall include a certified copy of the
23 order or court documentation and final disposition from the Clerk of Court in the county of
24 adjudication. The requirements of this Item shall be applicable at all times during which the officer
25 is employed and certified by the Commission and shall also apply to all applicants for certification.
26 Receipt by the Standards Division of a single notification, from the officer or the agency head, shall
27 be sufficient notice for compliance with this Item.

28 (b) . The word "officer" as identified in subparagraph (a) of this Rule, means those officers identified in NCGS
29 17C-2(3).

30 ~~(c) {(13)}~~ The requirements of this Rule shall apply to all applicants for certification and shall also apply at all times
31 during which the law enforcement officer is certified by the Commission.

32
33 *History Note: Authority G.S. 17C-6; 17C-10;*
34 *Eff. January 1, 1981;*
35 *Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995;*
36 *November 1, 1993; July 1, 1990;*

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
2 *2019;*
3 *Amended Eff. October 1, 2022*

1 12 NCAC 09C .0310 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09C .0310 AGENCY REPORTING OF DRUG SCREENING RESULTS**

4 (a) Every law enforcement officer shall ~~[have produced]~~ produce a negative result on a drug screen administered
5 according to the following specifications:

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

10 (2) a chain of custody shall be maintained on the specimen from collection to the eventual discarding
11 of the specimen. ~~If the specimen is handled only by a medical professional or a third party provider~~
12 and the laboratory utilizes federally mandated chain of custody procedures, then the agency does
13 not need an inter-agency chain of custody procedure. If agency staff will be handling the urine
14 specimen at any point, then the agency needs a firmly established chain of custody
15 procedure;

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

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

23 (5) conduct the test within 90 days of certification;

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

27 (b) Each agency shall report in writing to the Criminal Justice Standards Division all refusals and all positive results
28 of required drug screening obtained from applicants and lateral transfers. If the positive result were explained by the
29 applicant or lateral transfer to the satisfaction of the agency's ~~[medical review officer]~~ Medical Review Officer, who
30 shall be a licensed physician, the positive results are not required to be reported.

31 ~~(c)~~(b) Each agency, if it conducts a drug screen for in-service officers, shall report in writing positive results or
32 refusals to submit to an in-service drug screening to the Criminal Justice Standards Division within 30 days of the
33 positive result or refusal, unless the officer has explained the positive result ~~[has been explained]~~ to the satisfaction of
34 the agency's ~~[medical review officer]~~ Medical Review Officer, who shall be a licensed physician, to the extent
35 the drug screen conducted conforms to the specifications of this Rule. ~~12 NCAC 09B .0101(5)(a), (b), (e), (d), and (f).~~

1 ~~(d)~~(e) For reporting purposes, a result is considered "positive" only in those cases where the drug screen reveals the
2 presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of
3 Health and Human Services for Federal Workplace Drug Testing Programs and incorporated by reference in this Rule.

4 (e) For reporting purposes, a result is considered "negative" only in those cases where the drug screen reveals the
5 presence of an illegal drug at a level less than the threshold value as established by the Department of Health and
6 Human Services for Federal Workplace Drug Testing Programs and incorporated by reference in this Rule.

7 ~~(f)(e)~~(d) All written reports required to be submitted to the Criminal Justice Standards Division by this Rule shall
8 contain the individual's name, date of birth, either the date the test was administered or the date of the refusal, and a
9 copy of the drug screen panel with the results of the medical officer review.

10
11 *History Note: Authority G.S. 17C-6; 17C-10;*
12 *Eff. July 1, 1990;*
13 *Amended Eff. October 1, 2018; May 1, 2009;*
14 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
15 *2019.*
16 *Amended Eff. October 1, 2022*

Burgos, Alexander N

Subject: FW: [External] 12 NCAC 09A .0103, 09B .0102 and 09B .0104

From: Duke, Lawrence <lawrence.duke@oah.nc.gov>

Sent: Tuesday, September 13, 2022 11:47 AM

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

Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Dismukes, Leslie <ldismukes@ncdoj.gov>

Subject: RE: [External] 12 NCAC 09A .0103, 09B .0102 and 09B .0104

A few things:

09B .0104

- Change #3: Could it be reworded to put the requirement on the applicant? "The applicant shall provide..."

09B .0105

- Change #2: Could the definition used in your response be included in the rule to better define "qualified staff member"?

09B .0106

- Change #4 and #5: Could "The Division shall evaluate..." or "The Division's staff shall evaluate..." to make this more clear?

09B .0111

- Change #1: Could the language used in your response be included in the Rule to make this more clear?

09B .0114

- Change #4: Could the language used in your response be included in the Rule to make this more clear?

09C .0310

- Change #2 and #3: Could the language used in your response be included in the Rule to make this more clear?

Otherwise your submissions look good.

Lawrence Duke

Counsel, NC Rules Review Commission

Office of Administrative Hearings

(984) 236-1938

e official.

Burgos, Alexander N

From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Friday, September 9, 2022 1:51 PM
To: Duke, Lawrence
Cc: Burgos, Alexander N; Dismukes, Leslie
Subject: [External] 12 NCAC 09A .0103, 09B .0102 and 09B .0104
Attachments: 12 NCAC 09A .0103 Form 0400.pdf; 12 NCAC 09A .0103 Responses.docx; 12 NCAC 09A .0103.docx; 12 NCAC 09B .0102 Responses.docx; 12 NCAC 09B .0102.docx; 12 NCAC 09B .0104 Form 0400.pdf; 12 NCAC 09B .0104 Responses.docx; 12 NCAC 09B .0104.docx; 12 NCAC 09B .0102 Form 0400.pdf

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Good afternoon,

Attached are the last three rules and responses for your review.

For the webex meeting on the 15th, please send an invite to:

LDismukes@ncdoj.gov

MSchilling@ncdoj.gov

RHenderson@ncdoj.gov

Thank you for your guidance and assistance,

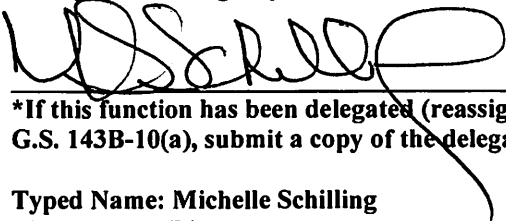
Michelle



MICHELLE SCHILLING
Deputy Director
Criminal Justice Standards Division
Office: (919) 779-8205
Fax: (919) 779-8210
MSchilling@ncdoj.gov
1700 Tryon Park Drive
Raleigh, NC 27602-0149
ncdoj.gov

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SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0114 Minimum Standards for Local Confinement Personnel	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0114

Recommended Change #1: *"In Item (11) can a definition or reference be made to any other authority for the definition of "good moral character"? Is this covered in 12 NCAC 09B .0101(3)? Also, what does "later court decisions" mean? How can this be applied?"*

Response: Good moral character is a concept that is not explicitly defined in law, rather, is a result of compilation of many years of case law that have developed through the courts. This concept continues to be defined on an ongoing basis by the courts and therefore it is important to allow reference to the changing legal landscape so that the Commission can always makes its decisions on this issue within the bounds of the law.

Please note that this language is not new. It has existed in the code since the beginning and the RRC has never taken issue with it before. It is hard to understand how it is now, all of a sudden, a problem. We are happy to discuss with you. Changing this now would upend years of Commission decisions and precedent.

Additionally, it is important for this to remain in this rule in full, as this rule regulates different staff (local confinement personnel) than 12 NCAC 09B .0101 (law enforcement officers). We try very hard to make our standards as clear as possible to the people we regulate. Having the local confinement personnel refer back to a rule that does not apply to them makes it overly complicated for them to understand how they will be governed.

Recommended Change #2: *"...were the changes from "5" days to "30" days done after publication in the register?"*

Response: Yes. This was not a substantive change. G.S. 150B-21.2, subsection (g) defines for a rule to "differ substantially" from a previously published rule. The most relevant portions of the test include whether the rule "affects the interests of persons who...could not reasonably have determined that the rule would affect their interests," or whether the rule "produces an effect that could not reasonably have been expected based on the proposed text of the rule".

Recommended Change #4: *"in subitem (12)(c), is the rule intended to only restrict "officers", rather than the two other positions, "supervisor" and "administrator", listed at the beginning of this rule?"*

Response: No. "Officer" means those officers identified in NCGS 17C-2(3), excluding correctional officers and probation/parole officers, regardless of rank or position.

Note: All recommended technical changes have been made to the draft rule.

1 12 NCAC 09B .0114 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0114 MINIMUM STANDARDS FOR LOCAL CONFINEMENT PERSONNEL**

4 ~~In addition to the requirements for criminal justice law enforcement officers contained in Rule .0101 of this Section,~~

5 **(a)** Every officer, supervisor, or administrator employed by a local confinement facility in North Carolina shall:

6 ~~(1) not have committed or been convicted of:~~

7 ~~(a) a felony; or~~

8 ~~(b) a crime for which the punishment could have been imprisonment for more than two years;~~

9 ~~or~~

10 ~~(c) a crime or unlawful act defined as a "Class B misdemeanor" within the five year period~~
11 ~~prior to the date of application for employment; or~~

12 ~~(d) four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the~~
13 ~~date of conviction; or~~

14 ~~(e) four or more crimes or unlawful acts defined as "Class A misdemeanors" except the~~
15 ~~applicant may be employed if the last conviction occurred more than two years prior to the~~
16 ~~date of application for employment;~~

17 ~~(2) be a high school, college, or university graduate or have passed the General Educational~~
18 ~~Development Test indicating high school equivalency.~~

19 (1) be a citizen of the United States;

20 (2) be at least 20 years of age;

21 (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09B .0106;

22 (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;

23 (5) have had a medical examination as required by 12 NCAC 09B .0104;

24 (6) have produced a negative result on a drug screen as described in 12 NCAC 09C .0310;

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

28 (8) have been interviewed as described in 12 NCAC 09B .0105; **and**

29 (9) have a background investigation conducted by the employing agency, including a personal interview
30 as required by 12 NCAC .09B .0102;

31 (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;

32 (11) be of good moral character as defined in : In re Willis 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed
33 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658,
34 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re
35 Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647
36 (1983); and later court decisions.

37 (12) Make the following notifications:

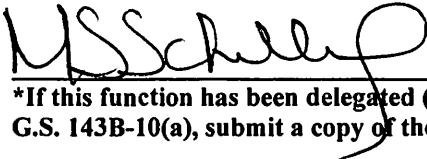
- 1 (a) within ~~30~~ 5 days of the qualifying event, notify the Standards Division and the appointing
2 agency head in writing of all criminal offenses for which the officer is charged or arrested.
3 This shall include traffic offenses identified in the Class B Misdemeanor Manual and
4 offenses of driving under the influence (DUI) or driving while impaired (DWI);
- 5 (b) within ~~30~~ 5 days of the qualifying event, notify the Standards Division and the appointing
6 agency head in writing of all criminal offenses for which the officer pleads no contest,
7 pleads guilty or of which the officer is found guilty. This shall include traffic offenses
8 identified in the Class B Misdemeanor Manual and offenses of driving under the influence
9 (DUI) or driving while impaired (DWI);
- 10 (c) within ~~30~~ 5 days of service, officers shall notify the Standards Division of all Domestic
11 Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are
12 issued by a judicial official against the officer;
- 13 (d) within ~~30~~ 5 days of the date the case was disposed of in court, the agency head, provided
14 he or she has knowledge of the officer's arrests or criminal charges and final dispositions,
15 shall also notify the Standards Division of arrests or criminal charges and final disposition;
16 and
- 17 (e) within ~~30~~ 5 days of the issuance of all Domestic Violence Protective Orders (G.S. 50B)
18 and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has
19 knowledge of the order, shall also notify the Standards Division of these orders.

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

29 ~~(b) (13)~~ The requirements of this Rule shall apply to all applicants for certification and shall also apply at all times
30 during which the law enforcement officer is certified by the Commission.

31
32 *History Note: Authority G.S. 17C-6; 17C-10;*
33 *Eff. January 1, 1981;*
34 *Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995;*
35 *November 1, 1993; July 1, 1990;*
36 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
37 *2019;*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0116 Minimum Standards for Juvenile Court Counselors and Chief Court Counselors	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  _____ *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0116

Recommended Change #1: *“What is the statutory authority to establish a “negative result” and how is this defined?”*

Response: Per NCGS 17C-10(c): “... the Commission, by rules and regulations, shall fix other qualifications for the employment, training, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officers.” Per 12 NCAC 09C .0310(c): “ For reporting purposes, a result is considered “positive” only in those cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs...” Per 12 NCAC 09B .0101(5): “.....and shall have produced a negative result on a drug screen administered according to the following specifications:

- (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
- (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;

Recommended Change #2: *“In Item (11) can a definition or reference be made to any other authority for the definition of “good moral character”? Is this covered in 12 NCAC 09B .0101(3)? Also, what does “later court decisions” mean? How can this be applied?”*

Response: Good moral character is a concept that is not explicitly defined in law, rather, is a result of compilation of many years of case law that have developed through the courts. This concept continues to be defined on an ongoing basis by the courts and therefore it is important to allow reference to the changing legal landscape so that the Commission can always makes its decisions on this issue within the bounds of the law.

Please note that this language is not new. It has existed in the code since the beginning and the RRC has never taken issue with it before. It is hard to understand how it is now, all of a sudden, a problem. We are happy to discuss with you. Changing this now would upend years of Commission decisions and precedent.

Additionally, it is important for this to remain in this rule in full, as this rule regulates different staff (juvenile court counselors and chief court counselors) than 12 NCAC 09B .0101 (law enforcement officers). We try very hard to make our standards as clear as possible to the people we regulate. Having the juvenile court counselors and chief court counselors refer back to a rule that does not apply to them makes it overly complicated for them to understand how they will be governed.

Recommended Change #3: *“...were the changes from “5” days to “30” days done after publication in the register?”*

Response: Yes. This was not a substantive change. G.S. 150B-21.2, subsection (g) defines for a rule to “differ substantially” from a previously published rule. The most relevant portions of the test include whether the rule “affects the interests of persons who...could not reasonably have determined that the rule would affect their interests,” or whether the rule “produces an effect that could not reasonably have been expected based on the proposed text of the rule”.

Recommended Change #4: *“in subitem (12)(c), is the rule intended to only restrict “officers”, rather than the two other positions, “supervisor” and “administrator”, listed at the beginning of this rule?”*

Response: No. “Officer” means those officers identified in NCGS 17C-2(3), excluding correctional officers and probation/parole officers, regardless of rank or position.

Note: All recommended technical changes have been made to the draft rule.

1 12 NCAC 09B .0116 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0116 MINIMUM STANDARDS FOR JUVENILE COURT COUNSELORS AND CHIEF**
4 **COURT COUNSELORS COURT COUNSELORS**

5 (a) In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every Every
6 [juvenile court counselor and chief court counselor] Juvenile Court Counselor and Chief Court Counselor employed
7 by the North Carolina Department of Juvenile Justice and Delinquency Prevention shall:

8 (1) ~~not have committed or been convicted of:~~

9 (a) ~~a felony;~~

10 (b) ~~a crime for which the punishment could have been imprisonment for more than two years;~~

11 (c) ~~a crime or unlawful act defined as a "Class B misdemeanor" within the five year period~~
12 ~~prior to the date of application for employment;~~

13 (d) ~~four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the~~
14 ~~date of conviction; or~~

15 (e) ~~four or more crimes or unlawful acts defined as "Class A misdemeanors" except the~~
16 ~~applicant may be employed if the last conviction occurred more than two years prior to the~~
17 ~~date of application for employment; and~~

18 (2) ~~have attained a bachelor's degree from a regionally accredited institution of higher learning.~~

19 (1) ~~be a citizen of the United States;~~

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

21 (3) ~~have attained a bachelor's degree [from a regionally accredited institution of higher learning] as~~
22 ~~described in 12 NCAC 09B .0106(b);~~

23 (4) ~~have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;~~

24 (5) ~~have had a medical examination as required by 12 NCAC 09B .0104;~~

25 (6) ~~have produced a negative results on a drug screen as described in 12 NCAC 09C .0310;~~

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

29 (8) ~~have been interviewed as described in 12 NCAC 09B .0105;~~

30 (9) ~~use the method of documenting the results of the background investigation it deems most~~
31 ~~appropriate to its needs in accordance with the Commission form. However, the Commission's~~
32 ~~Mandated Background Investigation Form (F-8) must be used as a guide of minimum information~~
33 ~~to be collected and recorded by the investigator for all other law enforcement officer applicants that~~
34 ~~are regulated by the Commission;~~

35 (10) ~~not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;~~

36 (11) ~~be of good moral character as defined in : In re Willis 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed~~
37 ~~423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658,~~

1 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re
2 Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647
3 (1983); and later court decisions.

4 (12) Make the following notifications:

5 (a) within [30] 5 days of the qualifying event, notify the Standards Division and the appointing
6 agency head in writing of all criminal offenses for which the officer is charged or arrested.
7 This shall include traffic offenses identified in the Class B Misdemeanor Manual and
8 offenses of driving under the influence (DUI) or driving while impaired (DWI);

9 (b) within [30] 5 days of the qualifying event, notify the Standards Division and the appointing
10 agency head in writing of all criminal offenses for which the officer pleads no contest,
11 pleads guilty or of which the officer is found guilty. This shall include traffic offenses
12 identified in the Class B Misdemeanor Manual and offenses of driving under the influence
13 (DUI) or driving while impaired (DWI);

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

17 (d) within [30] 5 days of the date the case was disposed of in court, the agency head, provided
18 he or she has knowledge of the officer's arrests or criminal charges and final dispositions,
19 shall also notify the Standards Division of arrests or criminal charges and final disposition;
20 and

21 (e) within [30] 5 days of the issuance of all Domestic Violence Protective Orders (G.S. 50B)
22 and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has
23 knowledge of the order, shall also notify the Standards Division of these orders.

24 ~~(13)~~ (13) The required notifications in this Rule shall be in writing and shall specify the nature of the
25 offense or order, the court in which the case was handled, the date of the arrest, criminal charge, or
26 service of the order, and the final disposition. The notification shall include a certified copy of the
27 order or court documentation and final disposition from the Clerk of Court in the county of
28 adjudication. The requirements of this Item shall be applicable at all times during which the officer
29 is employed and certified by the Commission and shall also apply to all applicants for certification.
30 Receipt by the Standards Division of a single notification, from the officer or the agency head, shall
31 be sufficient notice for compliance with this Item.

32 ~~(b) [(14)]~~ The requirements of this Rule shall apply to all applicants for certification and shall also apply at all times
33 during which the law enforcement officer is certified by the Commission.

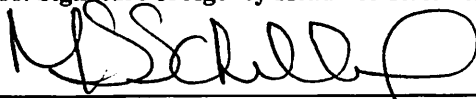
34
35 *History Note: Authority G.S. 17C-6;*
36 *Temporary Adoption Eff. April 15, 2003;*
37 *Eff. April 1, 2004;*

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

Amended Eff. October 1, 2022

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0117 Minimum Standards for Juvenile Justice Officers	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0117

Recommended Change #1: *“Additionally, who makes the determination as to what an “equivalent” to a high school graduate is? Is there a standard?”*

Response: 12 NCAC 09B .0106(b) indicates, “Documentary evidence of educational requirements shall consist of official transcripts of courses completed or diplomas received from a school that meets the approval guidelines of either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out-of state-agency. Per 12 NCAC 09B .0106(c), “documentary evidence of having received a high school equivalency credential from the issuing state shall be satisfied by a certified copy of a high school equivalency credential from the issuing state”.

Recommended Change #2: *“What is the statutory authority to establish a “negative result” and how is this defined?”*

Response: Per NCGS 17C-10(c): “... the Commission, by rules and regulations, shall fix other qualifications for the employment, training, and retention of criminal justice officers including minimum age, education, physical and mental standards, citizenship, good moral character, experience, and such other matters as relate to the competence and reliability of persons to assume and discharge the responsibilities of criminal justice officers.” Per 12 NCAC 09C .0310(c): “ For reporting purposes, a result is considered "positive" only in those cases where the drug screen reveals the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs....” Per 12 NCAC 09B .0101(5): “.....and shall have produced a negative result on a drug screen administered according to the following specifications:

- (a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;
- (b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;

Recommended Change #3: *“In Item (11) can a definition or reference be made to any other authority for the definition of “good moral character”? Is this covered in 12 NCAC 09B .0101(3)? Also, what does “later court decisions” mean? How can this be applied?”*

Response: Good moral character is a concept that is not explicitly defined in law, rather, is a result of compilation of many years of case law that have developed through the courts. This concept continues to be defined on an ongoing basis by the courts and therefore it is important to allow reference to the changing legal landscape so that the Commission can always makes its decisions on this issue within the bounds of the law.

Please note that this language is not new. It has existed in the code since the beginning and the RRC has never taken issue with it before. It is hard to understand how it is now, all of a sudden, a problem. We are happy to discuss with you. Changing this now would upend years of Commission decisions and precedent.

Additionally, it is important for this to remain in this rule in full, as this rule regulates different staff (juvenile justice officers) than 12 NCAC 09B .0101 (law enforcement officers). We try very hard to make our standards as clear as possible to the people we regulate. Having the juvenile justice officers refer back to a rule that does not apply to them makes it overly complicated for them to understand how they will be governed.

Recommended Change #4: *"...were the changes from "5" days to "30" days done after publication in the register?"*

Response: Yes. This was not a substantive change. G.S. 150B-21.2, subsection (g) defines for a rule to "differ substantially" from a previously published rule. The most relevant portions of the test include whether the rule "affects the interests of persons who...could not reasonably have determined that the rule would affect their interests," or whether the rule "produces an effect that could not reasonably have been expected based on the proposed text of the rule".

Recommended Change #5: *"in subitem (12)(c), is the rule intended to only restrict "officers", rather than the two other positions, "supervisor" and "administrator", listed at the beginning of this rule?"*

Response: No. "Officer" means those officers identified in NCGS 17C-2(3), excluding correctional officers and probation/parole officers, regardless of rank or position.

Recommended Change #6: *"Why is G.S 17C-2 cited as authority?"*

Response: G.S. 17C-2 identifies Juvenile Justice Officers as being subject to the education and training requirements of a Criminal Justice Officer.

Note: All recommended technical changes have been made to the submitted rule.

1 12 NCAC 09B .0117 is proposed amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0117 MINIMUM STANDARDS FOR JUVENILE JUSTICE OFFICERS**

4 ~~(a) In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every~~ Every
5 ~~juvenile justice officer~~ Juvenile Justice Officer employed by the North Carolina Department of Juvenile Justice and
6 Delinquency Prevention shall:

7 (1) ~~not have committed or been convicted of:~~

8 (a) ~~a felony;~~

9 (b) ~~a crime for which the punishment could have been imprisonment for more than two years;~~

10 (c) ~~a crime or unlawful act defined as a "Class B misdemeanor" within the five year period~~
11 ~~prior to the date of application for employment;~~

12 (d) ~~four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the~~
13 ~~date of conviction; or~~

14 (e) ~~four or more crimes or unlawful acts defined as "Class A misdemeanors" except the~~
15 ~~applicant may be employed if the last conviction occurred more than two years prior to the~~
16 ~~date of application for employment; and~~

17 (2) ~~be a high school, college, or university graduate or have passed the General Equivalency~~
18 ~~Development Test indicating high school equivalency.~~

19 (1) be a citizen of the United States;

20 (2) be at least 20 years of age;

21 (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09B .0106;

22 (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;

23 (5) have had a medical examination as required by 12 NCAC 09B .0104;

24 (6) have produced a negative results on a drug screen as described in 12 NCAC 09C .0310;

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

28 (8) have been interviewed as described in 12 NCAC 09B .0105; ~~and~~

29 (9) have a documented background investigation conducted by the agency using the method the agency
30 ~~use the method of documenting the results of the background investigation it~~ deems most
31 appropriate to its needs in accordance with the Commission form. However, the Commission's
32 Mandated Background Investigation Form (F-8) must be used as a guide of minimum information
33 to be collected and recorded by the investigator for all other law enforcement officer applicants that
34 are regulated by the Commission;

35 (10) not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;

36 (11) be of good moral character as defined in : In re Willis 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed
37 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658,

1 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re
2 Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647
3 (1983); and later court decisions.

4 (12) Make the following notifications:

5 (a) within [30] 5 days of the qualifying event, notify the Standards Division and the appointing
6 agency head in writing of all criminal offenses for which the officer is charged or arrested.
7 This shall include traffic offenses identified in the Class B Misdemeanor Manual and
8 offenses of driving under the influence (DUI) or driving while impaired (DWI);

9 (b) within [30] 5 days of the qualifying event, notify the Standards Division and the appointing
10 agency head in writing of all criminal offenses for which the officer pleads no contest,
11 pleads guilty or of which the officer is found guilty. This shall include traffic offenses
12 identified in the Class B Misdemeanor Manual and offenses of driving under the influence
13 (DUI) or driving while impaired (DWI);

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

17 (d) within [30] 5 days of the date the case was disposed of in court, the agency head, provided
18 he or she has knowledge of the officer's arrests or criminal charges and final dispositions,
19 shall also notify the Standards Division of arrests or criminal charges and final disposition;

20 (e) within [30] 5 days of the issuance of all Domestic Violence Protective Orders (G.S. 50B)
21 and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has
22 knowledge of the order, shall also notify the Standards Division of these orders.

23 ~~(13)~~ (13) The required notifications in this Rule shall be in writing and shall specify the nature of the offense or order,
24 the court in which the case was handled, the date of the arrest, criminal charge, or service of the order, and the final
25 disposition. The notification shall include a certified copy of the order or court documentation and final disposition
26 from the Clerk of Court in the county of adjudication. The requirements of this Item shall be applicable at all times
27 during which the officer is employed and certified by the Commission and shall also apply to all applicants for
28 certification. Receipt by the Standards Division of a single notification, from the officer or the agency head, shall be
29 sufficient notice for compliance with this Item.

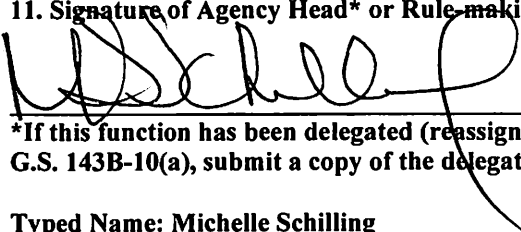
30 ~~(14)~~ (b) The requirements of this Rule shall apply to all applicants for certification and shall also apply at all times
31 during which the law enforcement officer is certified by the Commission.

32
33 *History Note: Authority G.S. 17C-2; 17C-6; 17C-10;*
34 *Temporary Adoption Eff. April 15, 2003;*
35 *Eff. April 1, 2004;*
36 *Amended Eff. November 1, 2015;*

1
2
3

*Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
2019.
Amended Eff. October 1, 2022*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0105 Employment Interview	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0105

Note: All recommended technical changes have been made to the draft rule.

Recommended Change #1: *"In Paragraph (a), clarify the purpose of "demonstrating potential" and whether the employing agency evaluates such. Everything after "abilities" is unclear and confusing.*

Response: Rule changed to delete "demonstrating potential".

Recommended Change #2: *"In Paragraph (b), what is the standard for a qualified staff member"? To what is this pursuant?"*

Response: A qualified staff member is an individual who is competent, whether by education, training, or experience, typically a mid to senior level law enforcement officer to conduct the employment interview. The respective agency head identifies those individuals he or she deems "qualified".

1 12 NCAC 09B .0105 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2

3 **12 NCAC 09B .0105 QUALIFICATIONS APPRAISAL EMPLOYMENT INTERVIEW**

4 (a) Prior to ~~employing any applicant for employment~~ employment, as a criminal justice officer, the employing agency
5 shall conduct an interview of the applicant to ~~determine~~ evaluate the applicant's knowledge, skills, and abilities ~~[and]~~
6 potential for demonstrating potential for success as a ~~criminal justice~~ law enforcement officer.

7 (b) The ~~Department~~ Agency head ~~should appoint a panel of staff members to sit as a unit with the Department head~~
8 ~~during the interview. However, the Department head may conduct the interview personally or by delegating~~ delegate
9 the responsibility to a qualified staff member or panel.

10 ~~(c) The agency may use the method of interviewing and recording the interview it deems most appropriate to its~~
11 ~~needs. The Commission's Qualifications Appraisal Interview form may be used as a guide for the interviewer.~~

12

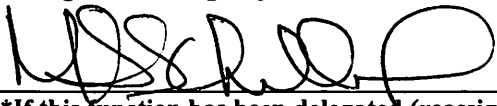
13 *History Note: Authority G.S. 17C-6; 17C-10;*

14 *Eff. January 1, 1981;*

15 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
16 *2019.*

17 *Amended Eff. October 1, 2022*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0106 Documentation of Educational Requirements	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0106

Note: All recommended technical changes have been made to the draft rule.

Recommended Change #1: *"In Paragraph (a), who makes the determination as to a comparable state agency"? Can reference be made to any NCDPI standards for such?"*

Response: When an out of state educational diploma or transcript is provided to Division staff, staff researches the requirements of that particular state to determine if those requirements are comparable to North Carolina. NCDPI does not have a reference. . The language in this rule was drafted in consultation with the Community College System to ensure that it adequately captures the educational requirements in a language that is commonly understood in that community. This is their suggested language.

Recommended Change #2: *"Similarly, who makes the determination for scholastically comparable curriculum in Paragraph (c)?"*

Response: Division staff research and compare the submitted curriculum to determine scholastic comparability.

Recommended Change #3: *"In Paragraph (c), what is the criteria for an authentic transcript?"*

Response: A translation of an academic transcript that is a word-for-word rendering of the document from one language into another excluding any editorial commentary.

Recommended Change #4: *"In Paragraph (c), who must evaluate the requirements?"*

Response: Division staff evaluate the requirements.

Recommended Change #5: *"Similarly, who must evaluate on-line or correspondence courses in Paragraph (d)?"*

Response: Division staff evaluate the on-line or correspondence courses.

Recommended Change #6: *"Additionally, who makes the determination as to whether a diploma meets state or local requirements for any given jurisdiction?"*

Response: Division staff research the state and local requirements from where the document was issued to determine if the requirements are met.

Recommended Change #7: *"What is the DD214 form reference in Paragraph (f). Does it have a name?"*

Response: Certificate of Release from Active Duty. Added to Code.

1 12 NCAC 09B .0106 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0106 DOCUMENTATION OF EDUCATIONAL REQUIREMENTS**

4 (a) Each applicant for ~~employment as a certification as a criminal justice law enforcement officer~~ shall furnish ~~to the~~
5 ~~employing agency~~ documentary evidence ~~that the applicant has met the educational requirements for the criminal~~
6 ~~justice field of expected employment.~~ of high school, college, or university graduation to the employing agency.

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

14 (b) High school diplomas earned through home school programs must be accompanied by a true and accurate or
15 certified transcript and must meet the requirements of Part 3 of Article 39 of Chapter 115C of the North Carolina
16 General Statutes, or a comparable out-of-state statute. Documentary evidence of educational requirements shall consist
17 of official transcripts of courses completed or diplomas received from a school that meets the approval guidelines of
18 either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable
19 out-of-state agency. Documentary evidence of college or university graduation consists of diplomas or transcripts
20 from colleges or universities accredited by the Department of Education of the state in which the institution is located,
21 from an accredited body recognized by either the U.S. Department of Education or the Council for Higher Education
22 Accreditation, or from the state university of the state in which the institution is located. High school diplomas earned
23 through correspondence enrollment in an entity that charges a fee and requires the individual to complete little or no
24 education or coursework to obtain a high school diploma shall not be recognized toward these minimum educational
25 requirements.

26 (c) Diplomas earned from high schools or equivalent institutions outside of the United States must be translated into
27 English and be accompanied by an authentic transcript. Transcripts shall be evaluated to ensure they are scholastically
28 comparable to United States curriculum requirements. Documentary evidence of having received a high school
29 equivalency credential from the issuing state shall be satisfied by a certified copy of a high school equivalency
30 credential from the issuing state.

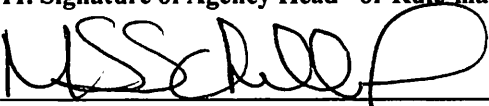
31 (d) High school diplomas earned through on-line or correspondence courses shall be evaluated on a case by case
32 basis. Such diplomas must meet state and local requirements for the jurisdiction from which the diploma was issued.

33 (e) Documentary evidence of having earned a High School Equivalency (HSE) diploma shall be satisfied by a certified
34 copy of a high school equivalency credential or an adult high school diploma, both of which must be recognized by
35 the U.S. Department of Education, the state Department of Education, or educational agency that is authorized in the
36 state to issue High School Equivalency (HSE) diplomas.

1 (f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency
2 examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214,
3 Certificate of Release from Active Duty.

4
5 *History Note: Authority G.S. 17C-6; 17C-10;*
6 *Eff. January 1, 1981;*
7 *Amended Eff. April 1, 2018; February 1, 2016; November 1, 2015; June 1, 2012; August 1, 2000;*
8 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
9 *2019.*
10 *Amended Eff. October 1, 2022*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0111 Criminal History Record	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTIOIN <input type="checkbox"/> REPEAL through READOPTIOIN	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  <hr style="border: 0; border-top: 1px solid black; margin: 5px 0;"/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0111

Recommended Change #1: *"In Paragraph (a), how is "shall not have committed" determined? What is the statutory authorization for making this determination? By what criteria?"*

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.

N.C.G.S § 17C-6(8) authorizes the North Carolina Criminal Justice Education and Training Standards Commission to "Investigate and make such evaluations as may be necessary to determine if criminal justice agencies, schools, and individuals are complying with the provisions of this Article."

This is not a provision that we added in this rulemaking hearing, rather, it has existed in the code for quite some time (possibly since its inception) and has not been challenged by the RRC in previous hearings on this rule.

Recommended Change #2: *"Does G.S. 17C-2 need to be cited as authority?"*

Response: Removed from draft rule.

Note: All recommended technical changes have been made to the draft rule.

1 12 NCAC 09B .0111 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0111 CRIMINAL HISTORY RECORD MINIMUM STANDARDS FOR LAW**
4 **ENFORCEMENT OFFICERS**

5 (a) Consistent with and subject to the requirements of 12 NCAC 09A .0204, every law enforcement officer employed
6 or certified in North Carolina shall not have committed or been convicted by a local, state, federal, or military court
7 of. In addition to the requirements for criminal justice officers contained in Rule .0101 of this Section, every law
8 enforcement officer employed by an agency in North Carolina shall:

9 (1) ~~not have committed or been convicted of:~~

10 (1) ~~(a)~~ a felony;

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

12 (3) ~~(c)~~ a crime or unlawful act defined as a "Class B misdemeanor" within the five year period prior to the
13 date of ~~application~~ certification for employment;

14 (4) a crime or unlawful act defined as a "Class B Misdemeanor" occurring after the date of certification;

15 (5) ~~(d)~~ four or more crimes or unlawful acts defined as "Class B misdemeanors" regardless of the date of
16 conviction;

17 (6) ~~(e)~~ four or more crimes or unlawful acts defined as "Class A misdemeanors" except the applicant may
18 be employed if the last conviction occurred more than two years prior to the date of certification
19 application for employment; or

20 (7) ~~(f)~~ a combination of four or more [~~"Class A or B Misdemeanors"~~] Class A Misdemeanor or Class B
21 Misdemeanor regardless of the date;

22 (8) for personnel who are authorized to carry a firearm in the execution of their duties, an offense that,
23 pursuant to 18 USC 922(g)(8), would prohibit the possession of a firearm or ammunition.
24 ammunition;

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

27 (2) ~~be a high school, college, or university graduate or have passed the General Educational~~
28 ~~Development Test indicating high school equivalency; and~~

29 (3) ~~satisfactorily complete the employing agency's in service firearms training program as prescribed~~
30 ~~in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to~~
31 ~~submission of the application for appointment to the Commission and must be completed using the~~
32 ~~agency approved service handgun(s) and any other weapon(s) that the applicant has been issued or~~
33 ~~authorized to use by the agency.~~

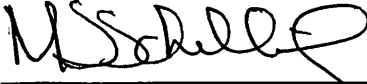
34
35 *History Note: Authority G.S. 17C-6; 17C-10;*

36 *Eff. January 1, 1981;*

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Amended Eff. November 1, 2015; April 1, 2009; August 1, 1998; December 1, 1987; October 1, 1985; January 1, 1985; January 1, 1983;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019.
Amended Eff. October 1, 2022

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09A .0103 Definitions	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly Cite Session Law: SB 300, Section 17 <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain:	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09A .0103

Recommended Change #1: *"In Item (5), what is the authority to make such a determination of conduct qualifying as a criminal offense? G.S. 17C-6(8)?"*

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.

N.C.G.S § 17C-6(8) authorizes the North Carolina Criminal Justice Education and Training Standards Commission to *"Investigate and make such evaluations as may be necessary to determine if criminal justice agencies, schools, and individuals are complying with the provisions of this Article."*

This is not a provision that we added in this rulemaking hearing, rather, it has existed in the code for quite some time (possibly since its inception) and has not been challenged by the RRC in previous hearings on this rule.

Recommended Change #2: *"In Item (6), does the definition of "Convicted" apply to all of Chapter 12? Does this definition go beyond the scope of the limitation imposed in line 4?"*

Response: No. It only applies to Chapter 9 of Article 12, Subchapters A-F. We will modify it to strike that language given that line 4 contains the disclaimer. The new language will read: "'Convicted" or "Conviction means the entry of:"

Recommended Change #3: *"In Subitem (6)(b), what is the definition of "adjudicatingofficial"? Is "adjudicating" defined separately?"*

Response: "Adjudicating" is not defined separately, it is given its common meaning. Subitem (6)(b) identifies those legal entities who hear evidence or argument by a party or parties and who render a judgment which affects an individual's interest in a specific matter.

Recommended Change #4: *"In Item (11), what is a "regionally accredited institution of higher learning"? Can a reference be made to such standard(s)? Section .0106 address what documentation is necessary from educational institutions and what documents from such accredited institutions are acceptable. Consider using similar language regarding the departments of education."*

Response: Rule change to reflect use of similar language.

Recommended Change #5: *In Subitems (12)(a) and (b), what entity or entities would “approve[s]” each course?*

Response: The Criminal Justice Standards Division would approve the courses identified in 12(a) as per 12 NCAC 09C .0211. Once submitted documentation has been reviewed and approved by Division staff, the respective School Director is notified of the approval to administer the course. The Director, Office of Staff Development and Training would approve all courses described in 12(b). The language in the enacting paragraph stating “Commission-certified basic training course” signifies this.

Recommended Change #6: *“In Subitem (24)(b)(iii), who makes the determination that a traffic offense in another jurisdiction is “comparable to the traffic offenses” listed in the Manual? Additionally, what is the standard used for such a determination?”*

Response: Division staff will research the state laws from another jurisdiction to determine its classification, process and any penalties for the various traffic offenses. This information is then compared with the state law of North Carolina to determine if the traffic offense is comparable to a North Carolina traffic offense, to include those listed in the Class B Misdemeanor Manual. North Carolina Department of Justice legal staff reviews the information and uses the same standards to compare that DAs use for comparing out of state convictions for purposes of determining similarity

1 12 NCAC 09A .0103 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09A .0103 DEFINITIONS**

4 The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified
5 in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- 6 (1) "Active Duty Military" means, for the purpose of determining eligibility for certification pursuant
7 to 12 NCAC 09B .0401 and 12 NCAC 09B .0403, full-time duty in the active military service of the
8 United States. Such term includes full-time training duty, annual training duty, and attendance while
9 in the active military service at a school designated as a service school by law or by the Secretary
10 of the military department concerned. Such term does not include full-time National Guard duty.
- 11 (2) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-
12 2(2).
- 13 (3) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of
14 the Department of Public Safety as authorized by G.S. 18B-500.
- 15 (4) "Chief Court Counselor" means the person responsible for administration and supervision of
16 juvenile intake, probation, and post-release supervision in each judicial district, operating under the
17 supervision of the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- 18 (5) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and
19 Training Standards Commission or equivalent regulating body from another state that a person
20 performed the acts necessary to satisfy the elements of a specified criminal offense.
- 21 (6) "Convicted" or "Conviction" means [for purposes of this Chapter,] the entry of:
22 (a) a plea of guilty;
23 (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body,
24 tribunal, or official, either civilian or military; or
25 (c) a plea of no contest, nolo contendere, or the equivalent.
- 26 (7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3).~~and excluding~~
27 ~~Correctional officers and probation/parole officers.~~
- 28 (8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described
29 in Item (2) of this Rule.
- 30 ~~"Department Head"~~ "Agency Head" means the chief administrator of any criminal justice agency,
31 and specifically includes any chief of police or agency director. ~~"Department Head"~~ "Agency Head"
32 also includes a designee appointed in writing by the ~~Department Head.~~ Agency Head.
- 33 (10) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina
34 Department of Justice.
- 35 (11) "Educational Points" means points earned toward the Professional Certificate Programs for studies
36 completed, with passing scores achieved, for semester hour or quarter hour credit hours awarded
37 from colleges or universities accredited by the Department of Education of the state in which the

1 institution is located, from an accredited body recognized by either the U.S. Department of
2 Education or the Council for Higher Education Accreditation, or from the state university of the
3 state in which the institution is located [at a regionally accredited institution of higher learning].

4 Each semester hour of college credit equals one educational point and each quarter hour of college
5 credit equals two-thirds of an educational point.

6 (12) "Enrolled" means that an individual is currently actively participating in an on-going presentation
7 of a Commission-certified basic training course that has not concluded on the day probationary
8 certification expires. The term "currently actively participating" as used in this definition means:

9 (a) for law enforcement officers, that the officer is attending an approved course presentation
10 averaging a minimum of 12 hours of instruction each week; and

11 (b) for Department of Public Safety, Division of Adult Correction and Juvenile Justice
12 personnel, that the officer is attending the last or final phase of the approved training course
13 necessary for satisfying the total course completion requirements.

14 (13) "High School" means an educational program that meets the compulsory attendance requirements
15 in the jurisdiction in which the school is located.

16 (14) "In-Service Training" means all training prescribed in 12 NCAC 09E .0105 that must be completed,
17 with passing scores achieved, by all certified law enforcement officers during each full calendar
18 year of certification.

19 (15) "In-Service Training Coordinator" means the person designated by a Criminal Justice Agency head
20 to administer the agency's In-Service Training program.

21 (16) "Lateral Transfer" means the employment of a criminal justice officer by a Criminal Justice Agency
22 based upon the officer's special qualifications or experience, without following the usual selection
23 process established by the agency for basic officer positions.

24 (17) "Law Enforcement Code of Ethics" means the code adopted by the Commission on September 19,
25 1973, that reads as follows:

26 As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to
27 protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence
28 or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

29 I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to
30 me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint;
31 and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I
32 will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a confidential
33 nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the
34 performance of my duty.

35 I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or
36 friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I

1 will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing
2 unnecessary force or violence and never accepting gratuities.

3 I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I
4 am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such
5 acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit
6 of justice.

7 I know that I alone am responsible for my own standard of professional performance and will take every reasonable
8 opportunity to enhance and improve my level of knowledge and competence.

9 I will constantly strive to achieve these objectives and ideals, dedicating myself before God or by affirmation to my
10 chosen profession law enforcement.

11 (18) "Juvenile Court Counselor" means a person responsible for intake services and court supervision
12 services to juveniles under the supervision of the ~~chief court counselor~~ Chief Court Counselor.

13 (19) "Juvenile Justice Officer" means a person designated by the Secretary of the Department of Public
14 Safety, Division of Adult Correction and Juvenile Justice to provide for the care and supervision of
15 juveniles placed in the physical custody of the Department.

16 (20) "Law Enforcement Officer" means an appointee of a Criminal Justice Agency, an agency of the
17 State, or of any political subdivision of the State who, by virtue of his or her office, is empowered
18 to make arrests for violations of the laws of this State. Specifically excluded from the title "Law
19 Enforcement Officer" are sheriffs and their sworn appointees with arrest authority who are governed
20 by the provisions of G.S. 17E.

21 (21) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers'
22 Professional Certificate Program by successful completion of Commission-approved law
23 enforcement training courses. Twenty classroom hours of Commission-approved law enforcement
24 training equals one law enforcement training point.

25 (22) "LIDAR" is an acronym for "Light Detection and Ranging" and means a speed-measuring
26 instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle
27 under observation.

28 (23) "Local Confinement Personnel" means any officer, supervisor, or administrator of a local
29 confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor, or
30 administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or
31 any officer, supervisor, or administrator of a district confinement facility in North Carolina as
32 defined in G.S. 153A-219.

33 (24) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances
34 as felonies. Misdemeanor offenses are classified by the Commission as follows:

35 (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any
36 common law, duly-enacted ordinance, or criminal statute of this State that is not classified
37 as a Class B Misdemeanor pursuant to Sub-item (24)(b) of this Rule. Class A Misdemeanor

1 also includes any act committed or omitted in violation of any common law, duly enacted
2 ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North
3 Carolina, either civil or military, for which the maximum punishment allowable for the
4 designated offense under the laws, statutes, or ordinances of the jurisdiction in which the
5 offense occurred includes imprisonment for a term of not more than six months. Excluded
6 from "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina
7 are motor vehicle or traffic offenses designated as misdemeanors under the laws of other
8 jurisdictions or duly enacted ordinances of an authorized governmental entity, with the
9 exception of the offense of impaired driving that is included herein as a Class A
10 Misdemeanor if the offender could have been sentenced for a term of not more than six
11 months. Also included herein as a Class A Misdemeanor is the offense of impaired driving,
12 if the offender was sentenced under punishment level three G.S. 20-179(i), level four G.S.
13 20-179(j), or level five G.S. 20-179(k). Class A Misdemeanor shall also include acts
14 committed or omitted in North Carolina prior to October 1, 1994, in violation of any
15 common law, duly enacted ordinance, or criminal statute of this State for which the
16 maximum punishment allowable for the designated offense included imprisonment for a
17 term of not more than six months.

18 (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common
19 law, criminal statute, or criminal traffic code of this State that is classified as a Class B
20 Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North
21 Carolina Department of Justice, incorporated herein by reference, and shall include any
22 later amendments and editions of the incorporated material as provided by G.S. 150B-21.6.
23 The publication is available from the Commission's website:
24 [http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B-](http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B-Misdemeanor-Manual-2005.aspx)
25 [Misdemeanor-Manual-2005.aspx](http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B-Misdemeanor-Manual-2005.aspx). Class B Misdemeanor also includes any act committed
26 or omitted in violation of any common law, duly enacted ordinance, criminal statute, or
27 criminal traffic code of any jurisdiction other than North Carolina, either civil or military,
28 for which the maximum punishment allowable for the designated offense under the laws,
29 statutes, or ordinances of the jurisdiction in which the offense occurred includes
30 imprisonment for a term of more than six months but not more than two years. Excluded
31 from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than
32 North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors
33 under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor
34 includes the following:

35 (i) either first or subsequent offenses of driving while impaired if the maximum
36 allowable punishment is for a term of more than six months but not more than two
37 years;

- (ii) driving while license permanently revoked or permanently suspended;
- (iii) those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual; and
- (iv) an act committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.

(25) "Qualified Assistant" means an additional staff person designated by the School Director to assist in the administration of a course when an institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.

(26) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band, the 24,050 to 24,250 MHZ frequency (K) band, or the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.

(27) "Resident" means any youth committed to a facility operated by the Department of Public Safety, Division of Adult Correction and Juvenile Justice.

(28) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.

(29) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.

(30) "Speed-Measuring Instruments" (SMI) means those devices or systems, including RADAR, Time-Distance, and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all devices or systems described or referenced in 12 NCAC 09C .0601.

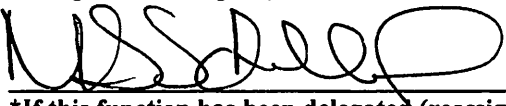
(31) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.

(32) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

*History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;
Eff. January 1, 1981;
Amended Eff. November 1, 1981; August 15, 1981;
Readopted Eff. July 1, 1982;
Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;*

1 *Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989;*
2 *Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995;*
3 *Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995;*
4 *Temporary Amendment Eff. January 1, 2001;*
5 *Amended Eff. August 1, 2002; April 1, 2001;*
6 *Temporary Amendment Eff. April 15, 2003;*
7 *Amended Eff. January 1, 2017; February 1, 2016; January 1, 2015; January 1, 2006; June 1, 2005;*
8 *April 1, 2004;*
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
13

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0102 Background Investigations	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0102

Recommended Change #1: *"In Paragraph (a), are the requirements for the examination of the applicant's character traits, habits, and good moral character different from the standards found in 12 NCAC 09B .0101? Does this rule only pertain to what the investigation must look into?"*

Response: The standards found in 12 NCAC 09B .0101 are only a part of what the requirements in paragraph (a) refer to. The background investigation develops information regarding a person's biographical data, family data, scholastic data, employment data, criminal history data, interviews with applicant's references, and then a summary of the investigator's findings and conclusions regarding the applicant's moral character. All of this is relevant to the determination of whether the individual meets all of the minimum standards as set forth in 12 NCAC 09B .0101.

Recommended Change #2: *"Are the contents or substantive requirements of Forms F-3 and F-8 prescribed by statute or another rule?"*

Response: Yes. G.S. § 17C-10(c) give us the authority to require that certain information be provided so that we can make minimum standards **determinations**.

Recommended Change #3: *"In Paragraph (c), what is the extent or standard for the [prior experience or training] necessary? Must the experience or training be in background investigations specifically to this agency and rule?"*

Response: An individual assigned to conduct a background investigation for a criminal justice officer position should be familiar with the conducting interviews, researching information, and identifying any potentially disqualifying information for certification purposes. Most of the training a background investigator needs is from actual field experience in knowing the requirements for the position being applied for. Agencies use mid to senior level law enforcement officers to conduct the background investigations and prepare summary documentation. This is guidance to agencies regarding who to use for this purpose, but each agency has a different make-up and there is a need to be flexible to let them determine who is best to conduct the background investigations. If an investigation were to come to us and we felt it deficient, Division staff would conduct additional inquiries.

Recommended Change #4: *'In Paragraph (d), in what or where must the employing agency "include" a Release?"*

Response: Agencies will include the Release Authorization Form in the application package that is submitted to the Criminal Justice Standards Division for review and certification, as noted in subsection (e).

Recommended Change #5: *“In Paragraph (e), what is the agency providing the results of AOC-CR-280 to? To the applicant? The Paragraph only states the agency shall “provide the results...for each applicant”.*

Response: Rule changed to reflect the results are provided to Division staff.

1 “12 NCAC 09B .0102 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0102 BACKGROUND INVESTIGATION**

4 ~~(a) Any agency contemplating the employment of an applicant as a criminal justice officer shall, prior~~ Prior to
5 employment, an agency shall complete a background investigation on ~~such applicant.~~ all applicants for certification.
6 The investigation shall examine the applicant's character traits and habits relevant to performance as a ~~criminal justice~~
7 law enforcement officer and shall determine whether the applicant is of good moral character. This examination
8 includes completion of Commission forms Personal History Statement Form (F-3) and Mandated Background
9 Investigation Form (F-8), ensuring the proper certification and criminal history record check required by each.

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

14 (c) The agency shall utilize an investigator with prior experience or training in conducting background investigations.
15 The investigator shall document the results of the investigation on the Mandated Background Investigation Form (F-
16 8) and shall include in the report of investigation:

- 17 (1) biographical data;
- 18 (2) family data;
- 19 (3) scholastic data;
- 20 (4) employment data;
- 21 (5) criminal history data;
- 22 (6) interviews with the applicant's references; and
- 23 (7) a summary of the investigator's findings and conclusions regarding the applicant's moral ~~character.~~
24 character known to the agency or listed on the applicant's Personal History Statement (F-3). This
25 documentation shall be included with all other documentation required in 12 NCAC 09C .0307.

26 (d) The employing agency shall include a signed and notarized Release Authorization Form that authorizes the
27 Division staff to obtain documents and records pertaining to the applicant for certification that may be required in
28 order to determine whether certification may be granted. ~~For criminal justice officers employed by the North Carolina~~
29 ~~Department of Juvenile Justice and Delinquency Prevention, the agency may use the method of documenting the~~
30 ~~results of the background investigation it deems most appropriate to its needs in accordance with the Commission~~
31 ~~form. However, the Commission's Mandated Background Investigation Form must be used as a guide of minimum~~
32 ~~information to be collected and recorded by the investigator for all other criminal justice officer applicants that are~~
33 ~~regulated by the Commission.~~

34 (e) The employing agency shall provide to the Division staff the results of a completed and processed form AOC-
35 CR-280, Law Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6,
36 15A-145.8A or 15A-146, for each applicant presented for certification. The AOC-CR-280 form is available on the
37 Commission's website at no cost [1](https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-</u></p></div><div data-bbox=)

1 ~~publications/. Upon written request by the Director of the Standards Division, the employing agency shall provide the~~
2 ~~Commission with a copy of any background investigation retained by the agency.~~

3

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

5 *Eff. January 1, 1981;*

6 *Amended Eff. August 1, 2002; August 1, 1998; July 1, 1989;*

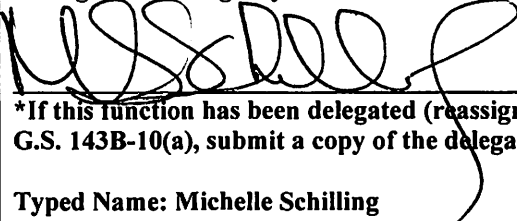
7 *Temporary Amendment Eff. April 15, 2003;*

8 *Amended Eff. April 1, 2004;*

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*

SUBMISSION FOR PERMANENT RULE

1. Rule-Making Agency: Criminal Justice Education and Training Standards Commission	
2. Rule citation & name (name not required for repeal): 12 NCAC 09B .0104 Medical Examination	
3. Action: <input type="checkbox"/> ADOPTION <input checked="" type="checkbox"/> AMENDMENT <input type="checkbox"/> REPEAL <input type="checkbox"/> READOPTION <input type="checkbox"/> REPEAL through READOPTION	
4. Rule exempt from RRC review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No	5. Rule automatically subject to legislative review? <input type="checkbox"/> Yes. Cite authority: <input checked="" type="checkbox"/> No
6. Notice for Proposed Rule: <input checked="" type="checkbox"/> Notice Required Notice of Text published on: April 1, 2022 Link to Agency notice: https://ncdoj.gov/law-enforcement-training/criminal-justice/forms-and-publications/ Hearing on: August 10, 2022 Adoption by Agency on: August 12, 2022 <input type="checkbox"/> Notice not required under G.S.: Adoption by Agency on:	
7. Rule establishes or increases a fee? (See G.S. 12-3.1) <input type="checkbox"/> Yes Agency submitted request for consultation on: Consultation not required. Cite authority: <input checked="" type="checkbox"/> No	8. Fiscal impact. Check all that apply. <input type="checkbox"/> This Rule was part of a combined analysis. <input type="checkbox"/> State funds affected <input type="checkbox"/> Local funds affected <input type="checkbox"/> Substantial economic impact (≥\$1,000,000) <input type="checkbox"/> Approved by OSBM <input checked="" type="checkbox"/> No fiscal note required
9. REASON FOR ACTION	
9A. What prompted this action? Check all that apply: <input type="checkbox"/> Agency <input type="checkbox"/> Court order / cite: <input type="checkbox"/> Federal statute / cite: <input type="checkbox"/> Federal regulation / cite: <input checked="" type="checkbox"/> Legislation enacted by the General Assembly <input type="checkbox"/> Petition for rule-making <input type="checkbox"/> Other:	
9B. Explain: SB 300, Section 5(a) To develop uniform, statewide minimum standards for law enforcement officers and justice officers and adopt these standards as rules.	
10. Rulemaking Coordinator: Michelle Schilling Phone: 919-779-8205 E-Mail: MSchilling@ncdoj.gov Additional agency contact, if any: Phone: E-Mail:	11. Signature of Agency Head* or Rule-making Coordinator:  <hr/> *If this function has been delegated (reassigned) pursuant to G.S. 143B-10(a), submit a copy of the delegation with this form. Typed Name: Michelle Schilling Title: Deputy Director
RRC AND OAH USE ONLY	
Action taken: <input type="checkbox"/> RRC extended period of review: <input type="checkbox"/> RRC determined substantial changes: <input type="checkbox"/> Withdrawn by agency <input type="checkbox"/> Subject to Legislative Review <input type="checkbox"/> Other:	

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 .0104

Recommended Change #1: *"In Paragraph (a), are the contents or substantive requirements of Forms F-1 and F-2 prescribed by statute or another rule?"*

Response: Yes. G.S. § 17C-10(c), and 12 NCAC 09B .0203(f).

Recommended Change #2: *In Paragraph (a), can reference be made to the rules and regulations of the United States Armed Forces regarding authorization to practice medicine?"*

Response: Reference added to rule.

Recommended Change #2: *"In Paragraph (b), under what statutory authority can CJETS regulate or place requirements on medical providers?"*

Response: These requirements are not placed upon medical providers. They are requirements for submission to the Commission, which we can direct under G.S. § 17C-10(c). Most agencies contract with particular providers or have medical providers on staff (like DPS) and so they follow the rules of the agency. No medical provider is bound by this, but in order to get a complete submission the agency must find one who will comply with our criteria for submission.

1 12 NCAC 09B .0104 is amended with changes as published in 36:19 NCR 1532-1554 as follows:

2
3 **12 NCAC 09B .0104 MEDICAL EXAMINATION**

4 (a) Each applicant for ~~employment as a criminal justice officer~~ certification or enrollment in a basic law enforcement
5 training course shall complete ~~complete, sign, and date~~ the Commission's Medical History Statement Form (F-1)
6 ~~within one year prior to employment by the employing agency~~ and shall be examined by either a surgeon, physician,
7 physician assistant, or nurse practitioner who is licensed to practice ~~medicine in~~ North Carolina or by a surgeon,
8 ~~physician, physician assistant, or nurse practitioner~~ authorized to practice medicine in [accordance with the rules and
9 ~~regulations of~~] the United States Armed Forces, as outlined in 10 U.S. Code § 1094, to help determine his or her the
10 ~~applicant's fitness in to carry~~ carrying-out the physical requirements of the ~~criminal justice officer position.~~ position
11 of law enforcement officer.

12 (b) ~~The examining~~ Prior to conducting the examination, the surgeon, physician, physician assistant, or nurse
13 practitioner shall: ~~shall record the results of the examination on the Commission's Medical Examination Report Form~~
14 ~~and shall record any evidence of past or present defects, diseases, injuries, operations.~~

15 (1) read the "Medical Screening Guidelines for the Certification of Criminal Justice Officers in North
16 Carolina" as published by the North Carolina Department of Justice. Copies of this publication may
17 be obtained at no cost at <https://ncdoj.gov/law-enforcement-training/criminal-justice/>;

18 (2) read, sign, and date the Medical History Statement Form (F-1); and

19 (3) read the Instructions to Agency and Examiner for Completion of Medical Examination Report (F-
20 2A) Form attached to the Medical Examination Report Form (F-2).

21 (c) The examining physician, surgeon, physician's assistant, nurse practitioner, shall record the results of the
22 examination on the Medical Examination Report Form (F-2) and shall sign and date the form. ~~An applicant for~~
23 ~~employment as a law enforcement officer seeking general certification may not be employed or placed in a sworn law~~
24 ~~enforcement position prior to the date on which the employing agency receives the report of the results of the medical~~
25 ~~examination unless all of the following requirements are met:~~

26 (1) ~~The applicant has completed and signed the applicant's certificate (Section A) of the Commission's~~
27 ~~Report of Appointment, wherein the applicant's temporary employment and probationary law~~
28 ~~enforcement officer certification is acknowledged to be contingent on a report to the Commission~~
29 ~~of the completion of the drug screening of the individual being issued general certification.~~

30 (2) ~~The requirements of this Paragraph shall be met within 60 days of the law enforcement officer being~~
31 ~~issued general certification.~~

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

34 (1) the applicant's beginning the Basic Law Enforcement Training Course; and

35 (2) the agency submission of application for certification to the Commission.

36
37 *History Note: Authority G.S. 17C-6; 17C-10;*

1 *Eff. January 1, 1981;*
2 *Amended Eff. April 1, 2018; October 1, 2017; November 1, 1993; February 1, 1991; March 1, 1990;*
3 *April 1, 1985;*
4 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
5 *2019.*
6 *Amended Eff. October 1, 2022*

Burgos, Alexander N

From: Duke, Lawrence
Sent: Friday, September 2, 2022 4:24 PM
To: Schilling, Michelle; Burgos, Alexander N
Subject: RRC - Request for Changes - CJETS - 12 NCAC 09A, B, & C
Attachments: CJETS - 09.2022 - 12 NCAC 9A-B-C Change Requests.docx

Good afternoon,

I'm the attorney who reviewed the Rules submitted by CJETS for the September 2022 RRC meeting. The RRC will formally review these Rules at its meeting on Thursday, September 15, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an invite should be sent to you as we get closer to the meeting. If there are any other representatives from your Board who will want to attend virtually, let me know prior to the meeting, and we will get invites out to them as well.

Please submit the revised Rules and forms to me via email, no later than 5 p.m. on Friday, September 9, 2022.

In the meantime, please let me know if you have any questions or concerns about these changes.

Thanks,

Lawrence Duke

Counsel to the North Carolina Rules Review Commission
Office of Administrative Hearings
(984) 236-1938
Lawrence.Duke@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.

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