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Criminal Justice Standards Div.

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Holly Cardoza, CJETS Rulemaking Coordinator
North Carolina Criminal Justice Education and Training Standards Commission
North Carolina Department of Justice
1700 Tryon Park Drive
Raleigh, NC 27610

**RE: Petition for Rulemaking Pursuant to N.C.G.S. § 150B-20
Request to Amend 12 NCAC 09B .0101(10) and 12 NCAC 09B .0111(a)(1)**

Dear Members of the Commission,

My name is Richard Hooks. I am submitting this petition as an individual North Carolina citizen and a law enforcement professional with over fifteen years of service, not on behalf of any agency. I am using my work contact information above only so the Commission has a reliable way to reach me, not as an institutional submission. In that same spirit, I identify my work title and agency of employment below not to speak on that agency's behalf, but because they reflect the professional experience behind my concern and my vested interest in seeing North Carolina law enforcement hold itself to the highest professional standards. Pursuant to N.C.G.S. § 150B-20, I respectfully petition the North Carolina Criminal Justice Education and Training Standards Commission to amend 12 NCAC 09B .0101(10) and 12 NCAC 09B .0111(a)(1), and their related sanction provisions at 12 NCAC 09A .0204(a)(1) and 12 NCAC 09A .0205(a)(1), to distinguish between violent and non-violent felony offenses when determining whether an applicant or officer's certification should be subject to automatic, permanent revocation.

I want to be transparent about what prompted this petition. I recently testified in support of a fellow officer whose certification is being challenged under this exact rule, over a non-violent felony matter from his early twenties that was dismissed and later expunged. That experience is what led me to look closely at how this rule is written, and I believe the issue it raises is broader than any one case.

Statutory Basis for This Petition

I raise this section only to confirm, for the record, that this request follows the process North Carolina law establishes for exactly this purpose. N.C.G.S. § 150B-20 grants any person the right to petition a state agency to adopt, amend, or repeal one of its rules. Because 12 NCAC 09B .0101(10) and .0111(a)(1) are rules the Commission adopted under its own rulemaking authority, rather than statutes enacted by the General Assembly, the Commission has the authority to amend them directly through this process, without any need for legislative action. The statute requires the Commission to provide a substantive written response to this petition, either denying it with the reasons stated or initiating rulemaking proceedings. If the Commission determines that rulemaking is warranted, the process would continue under Article 2A of Chapter 150B, including publication of the proposed change in the North Carolina Register and an opportunity for public comment before any final adoption.

The Current Rule

As currently written, these rules treat the commission of any felony, regardless of its nature, severity, or how long ago it occurred, as grounds for mandatory, permanent revocation or denial of certification. 12 NCAC 09A .0103(6) defines “commission of an offense” as a finding by the Commission that a person performed the acts necessary to satisfy the elements of a specified criminal offense, whether or not that person was ever convicted. The rule draws no distinction between a violent felony committed as a pattern of adult conduct and a single, non-violent offense committed decades earlier, often in a person's youth, that has since been resolved through dismissal or expungement and has no bearing on the person's fitness to serve today.

Why This Rule Is Too Broad

North Carolina has many offenses classified as felonies that vary enormously in seriousness. An absolute rule that treats all of them identically, and permanently, does not serve the goals of public safety or professional integrity. It excludes capable, ethical candidates over conduct that may be many years removed from who they are today, while doing nothing to distinguish that conduct from genuinely violent or predatory crimes that should, appropriately, result in permanent disqualification.

This rule also creates a perverse incentive that undermines the very honesty and integrity the certification process is meant to protect. A candidate who is forthcoming about a past offense, and who has since built a record demonstrating growth and accountability, is permanently barred under the current rule. A candidate who conceals the same information, by contrast, faces no such consequence unless the concealment is later discovered. The rule as written rewards dishonesty and punishes disclosure, which is the opposite of what it should incentivize in future law enforcement officers.

This is also inconsistent with the broader direction North Carolina law has taken. The General Assembly has expanded expungement eligibility and adopted “second chance” reforms in recent years, recognizing that early-life mistakes should not permanently define a person's opportunities. Law enforcement certification stands as an outlier to this trend, at a moment when agencies across the state are already struggling to recruit and retain qualified officers. A rule this broad works directly against those recruitment and retention efforts by excluding otherwise well-qualified candidates over conduct that bears no relationship to their fitness to serve.

Comparison to Other States

I reviewed the felony certification standards of a substantial sample of other states, verifying twenty-two directly against their statutes, administrative codes, and certifying agencies. Based on that review, North Carolina appears to be the only state that combines all four of the following features in a single rule: a certification decision that turns on an administrative finding that a person “committed” a felony, independent of any criminal conviction; a mandatory, non-discretionary sanction once that finding is made; a permanent duration for that sanction; and no case-by-case consideration of the offense's severity, the person's age at the time, the time elapsed, or the person's subsequent record. No other state I reviewed pairs all four of these features together.

Missouri offers the clearest illustration of why this combination is unusual. Missouri's certifying statute uses language remarkably close to North Carolina's, authorizing discipline for an officer who has committed a criminal offense “whether or not a criminal charge has been filed, has been convicted, or has entered a plea.” Missouri's Supreme Court upheld this approach against constitutional challenge in 2019. But Missouri makes this ground discretionary, not mandatory, and its director may choose among a range of sanctions, including probation and suspension, rather than being required to impose a permanent bar. A state can adopt the same evidentiary trigger North Carolina uses and still preserve proportionality in the outcome. Indiana and Illinois similarly authorize action on unconvicted conduct through discretionary processes rather than automatic, permanent bars, and Florida's comparable moral-character standard is

applied through a set of penalty guidelines that weigh aggravating and mitigating factors rather than an automatic permanent result.

Other states address this officer's specific circumstance, a case that was dismissed without a conviction, directly and explicitly. Georgia's certification statute provides that its council may not deny certification to an applicant whose adjudication of guilt or sentence was withheld or never entered. Texas similarly limits its mandatory disqualification to cases where a court has actually entered an adjudication of guilt, so that a dismissal or a pretrial diversion completed without an adjudication does not disqualify an applicant.

Two states also provide concrete models for the kind of case-by-case review this petition requests. South Carolina's regulation on withdrawal of certification directs its council to consider the seriousness of the offense, its frequency, and any mitigating circumstances before acting on a disqualifying offense. Oregon similarly routes most non-enumerated criminal conduct through a Policy Committee that weighs aggravating and mitigating circumstances, reserving its mandatory, automatic sanction for a defined list of the most serious convictions.

I want to represent this comparison accurately rather than overstate it. Twenty-eight states were not individually verified against primary sources in this review, and it remains possible that one of them matches North Carolina's approach as closely as Missouri's evidentiary standard does. What I can say with confidence is that every state whose standard most closely resembles North Carolina's, the states that also reach unconvicted conduct, chose to pair that standard with discretion, mitigation, or a path to reinstatement that North Carolina's rule does not provide.

Requested Amendment

I request that the Commission amend the rules cited above so that:

- Commission of a violent felony continues to result in automatic, permanent revocation or denial of certification, consistent with the current rule; and
- Commission of a non-violent felony is reviewed on a case-by-case basis, considering factors such as the nature of the offense, the applicant or officer's age at the time, the time elapsed, whether the matter was dismissed or expunged, and the person's subsequent record, rather than resulting in an automatic and permanent bar.

This approach would mirror the discretionary framework the Commission already applies to other categories of misconduct under 12 NCAC 09A .0204(b), where mitigating circumstances may be considered at the administrative hearing stage, and would bring North Carolina's standard in line with the approach other states, including Missouri, South Carolina, and Oregon, already apply to comparable or identical evidentiary standards. Extending a similar, structured discretion to non-violent felony matters would not weaken the Commission's standards. It would make them more precise, allowing the Commission to continue excluding candidates who pose a genuine risk while no longer categorically excluding those who do not.

Statement of Effect

This amendment would affect applicants and certified officers whose certification history includes a non-violent felony, allowing their circumstances to be evaluated individually rather than resulting in automatic, permanent disqualification. It would not alter the treatment of violent felonies, which would remain subject to automatic revocation under the current rule. Agencies across the state would benefit from an expanded, more precisely qualified applicant pool at a time when recruitment and retention are a significant and ongoing challenge.

Per 12 NCAC 09A .0107(a)(2), I have attached a draft of the proposed rule text as an exhibit to this petition. I offer that draft as a starting point for the Commission's consideration, not as final language, and I defer to the Commission's rulemaking staff on exact numbering, placement, and drafting conventions. I would welcome the opportunity to discuss this petition further, and I am glad to provide any additional information the Commission may find helpful, including the full comparative review referenced above. Thank you for your consideration.

Respectfully,

Richard Hooks

Attachment: Proposed Rule Text

Submitted with the Petition for Rulemaking of Richard Hooks, pursuant to 12 NCAC 09A .0107(a)(2)

The following reflects the current rule text as published in the North Carolina Administrative Code (current through NC Register Vol. 39, No. 6, September 16, 2024), with proposed deletions shown in ~~struck-through text~~ and proposed additions shown in **bold underlined text**. This draft is offered as a starting point for the Commission's consideration; exact numbering, placement, and drafting conventions are left to the Commission's rulemaking staff.

1. 12 NCAC 09A .0103 – Definitions

Proposed new definition (numbering to be assigned by the Commission):

“Violent felony offense” means a felony offense that has as an element the use, attempted use, or threatened use of physical force against the person of another, or an offense under the law of another jurisdiction that would be classified as a violent felony offense under this definition if committed in North Carolina.

2. 12 NCAC 09A .0204 – Suspension, Revocation, or Denial of Certification

Current text of subsection (a):

(a) The Commission shall revoke the certification of a criminal justice officer when the Commission finds that the officer has committed or been convicted of: (1) a felony offense; or (2) a criminal offense for which the authorized punishment included imprisonment for more than two years.

Proposed amended text:

(a) The Commission shall revoke the certification of a criminal justice officer when the Commission finds that the officer has committed or been convicted of: (1) a ~~felony~~ **violent felony** offense; or (2) a criminal offense for which the authorized punishment included imprisonment for more than two years.

Proposed new subsection, added to the existing discretionary causes in subsection (b):

() has committed or been convicted of a non-violent felony offense, in which case the Commission shall consider the nature and circumstances of the offense, the applicant's or officer's age at the time of the offense, the time elapsed since the offense, whether the matter was dismissed or expunged, and the applicant's or officer's subsequent record, in determining whether and to what extent to suspend, revoke, reduce, or impose probation in lieu of certification action, consistent with the case-by-case procedure already provided in this subsection and in 12 NCAC 09A .0205(b).

3. 12 NCAC 09A .0205 – Period of Suspension, Revocation, or Denial

Current text of subsection (a)(1)-(2):

(1) commission or conviction of a felony offense, except as provided by G.S. 17C-13(a); (2) commission or conviction of a criminal offense for which punishment is authorized by law to included imprisonment for more than two years, except as provided by G.S. 17C-13(a); or

Proposed amended text:

(1) commission or conviction of a ~~felony~~ **violent felony** offense, except as provided by G.S. 17C-13(a); (2) commission or conviction of a criminal offense for which punishment is authorized by law to included imprisonment for more than two years, except as provided by G.S. 17C-13(a); or

Correspondingly, a non-violent felony offense addressed under the new subsection (b) provision proposed above would fall under the existing case-by-case reduction, suspension, or probation procedure already set out in 12 NCAC 09A .0205(b), without further amendment to that subsection.

4. 12 NCAC 09B .0111 – Criminal History Record

Current text of subsection (a)(1):

(a) Consistent with and subject to the requirements of 12 NCAC 09A .0204, every law enforcement officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal, or military court of: (1) a felony; (2) a crime for which the punishment could have been imprisonment for more than two years; ...

Proposed amended text:

(a) Consistent with and subject to the requirements of 12 NCAC 09A .0204, every law enforcement officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal, or military court of: (1) a felony **violent felony, or a non-violent felony except as provided in 12 NCAC 09A .0204(b)**; (2) a crime for which the punishment could have been imprisonment for more than two years; ...

Note on Scope

This draft addresses the Criminal Justice Education and Training Standards Commission's rules only. A parallel amendment would be needed to 12 NCAC 10B .0301(10) and 12 NCAC 10B .0204(d) for the Sheriffs' Education and Training Standards Commission's rules to achieve the same result for deputy sheriffs, since that Commission's felony provisions are structured similarly but adopted separately.