



**STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS**

January 21, 2022

Chris Blue, Chair
Criminal Justice Education and Training Standards Commission
Sent via email only: CBLUE@townofchapelhill.org

Re: Objection to Rules 12 NCAC 09B .0101 and 09G .0205

Dear Mr. Blue:

At the January 20, 2022 meeting of the Rules Review Commission, the Commission reviewed the amendments to the above referenced Rules filed by the Criminal Justice Education and Training Standards Commission on January 13, 2022. The Findings of Need Forms filed with these Rules indicate that the Rules were adopted by the agency on January 10, 2022. The Rules Review Commission declined to approve the above-captioned temporary rules in accordance with G.S. 150B-21.1(b), finding that the agency did not meet the required implementation date set forth in Session Law 2021-138, Section 7.(i) and therefore lacked the statutory authority to promulgate temporary rules under G.S. 150B-21.1(a)(2).

The Findings of Need Forms for the Rules state that the temporary rules were mandated by Session Law 2021-138, Section 7(c), which states the following:

SECTION 7.(c) G.S. 17C-10(c) reads as rewritten:

"(c) In addition to the requirements of subsection (b) of this section, 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, ~~and the officers.~~ The Commission shall prescribe the means for presenting evidence of fulfillment of these requirements. The Commission shall require the administration of a psychological screening examination, including a face-to-face, in-person interview conducted by a licensed psychologist, to determine the criminal justice officer's psychological suitability to properly fulfill the responsibilities of the criminal justice officer. If face-to-face, in-person is not practicable, the face-to-face evaluation can be virtual as long as both the audio and video allow for a professional clinical evaluation in a clinical environment. The psychological screening examination shall be given (i) prior to the initial certification or (ii) prior to the criminal justice officer performing any action requiring certification by the Commission.

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

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1711 New Hope Church Road, Raleigh, NC 27609
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Where minimum educational standards are not met, yet the individual shows potential and a willingness to achieve the standards by extra study, they may be waived by the Commission for the reasonable amount of time it will take to achieve the standards required. Such an educational waiver shall not exceed 12 months."

Session Law 2021-138, Section 7.(i) further states:

SECTION 7.(i) The North Carolina Criminal Justice Education and Training Standards Commission and the North Carolina Sheriffs' Education and Training Standards Commission shall implement the requirements of subsections (a) through (d) of this section no later than January 1, 2022. The requirements of subsections (c) and (d) of this section shall apply to certifications issued and employees entering employment on or after the implementation date of those requirements.

The Rules Review Commission found the Criminal Justice Education and Training Standards Commission (CJETS) lacked the statutory authority to promulgate temporary rules under G.S. 150B-21.1(a)(2) as Session Law 2021-138 required the Criminal Justice Education and Training Standards Commission to "implement the requirements... no later than January 1, 2022." Based upon the Findings of Need form filed with the above-referenced Rules on January 13, 2022, the Criminal Justice Education and Training Standards Commission did not adopt these Rules until January 10, 2022 and did not meet the required date of January 1, 2022 to "implement the requirements" of the Session Law.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.1(b1) or (b2). If you have any questions regarding the Rule Review Commission's action, please let me know.

Sincerely,

A handwritten signature in black ink that reads "Amber May". The signature is fluid and cursive.

Amber May
Commission Counsel

cc: Charminique Williams, Rulemaking Coordinator

Donald Robert van der Vaart, Director
Chief Administrative Law Judge

Fred G. Morrison, Jr.
Senior Administrative Law Judge

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