



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Criminal Justice Education Training and Standards Commission

2. Rule citation & name: 12 NCAC 09B .0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes ☐ No Effective date:

5. Provide dates for the following actions as applicable:

a. Proposed Temporary Rule submitted to OAH: November 22, 2021

b. Proposed Temporary Rule published on the OAH website: November 30, 2021

c. Public Hearing date: December 28, 2021

d. Comment Period: December 02, 2021-December 22, 2021

e. Notice pursuant to G.S. 150B-21.1(a3)(2): November 30, 2021

f. Adoption by agency on: January 10, 2022

g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:

h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: Session Law 2021-138 Senate Bill 300 Section 7(c)
Effective date: September 02, 2021
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: Senate Bill 300 is a comprehensive criminal justice reform that specifically requires psychological screening examination for criminal justice officers prior to employment. Section VII Law Enforcement Officer Entry Requirements, Ongoing Requirements, and Create a Physical Fitness Study, Section 7(c) states "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".

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

Section 7 (a) Senate Bill 300 expressly mandates that the Commission's minimum educational and training standards include "Education and training to develop knowledge and increase awareness of effective mental health and wellness strategies for criminal justice officers." In furtherance of the objective to prioritize mental health and wellness, Section 7(c) requires the administration of a psychological screening examination to determine the criminal justice officer's psychological suitability to properly fulfill the responsibilities of the criminal justice officer. Immediate adoption of the rule is required to comply with the statute because Section 7(i) requires the Commission to implement these requirements no later than January 1, 2022. Moreover, the public interest will be greatly benefitted by the immediate adoption of a rule that puts criminal justice officer mental health and wellbeing at the forefront.

8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Charminique D. Williams

Phone: (919) 779-8206

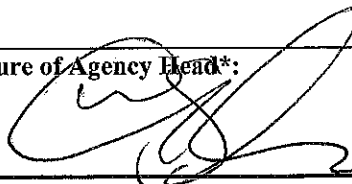
E-Mail: cdwilliams@ncdoj.gov

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head*:



* 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: Chris Blue

Title: Commission Chair

E-Mail: CBLUE@townofchapelhill.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Criminal Justice Education Training and Standards Commission

RULE CITATION: 12 NCAC 09B .0101

DEADLINE FOR RECEIPT: Tuesday, January 18, 2022 at noon

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

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

Item (6) and Sub-Items (6)(a) and (b) repeat G.S. 17C-10(c), as amended by S.L. 2021-138. Rather than repeating statute, please say something like "have been administered a psychological screening examination in accordance with G.S. 17C-10(c)."

G.S. 17C-10(c), as amended by S.L. 2021-138 says that the psychological examination requirement shall be given before initial certification and prior to "any action requiring certification by the Commission." (6)(c) references "initial or probationary certification." Is "probationary certification" the only other "action requiring certification by the Commission"? How do these go together?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 14, 2022

1 12 NCAC 09B .0101 is proposed for amendment under temporary procedures as follows:

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

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

7
8 **12 NCAC 09B .0101 MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS**

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

- 11 (1) be a citizen of the United States;
- 12 (2) be at least 20 years of age;
- 13 (3) be of good moral character pursuant to G.S. 17C-10 as evidenced by the following:
- 14 (a) not having been convicted of a felony;
- 15 (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for five
16 years or the completion of any corrections supervision imposed by the courts, whichever
17 is later;
- 18 (c) not having been convicted of an offense that would prohibit the possession of a firearm or
19 ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with
20 subsequent amendments and editions and can be found at no cost at
21 [https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf)
22 [partI-chap44.pdf](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf);
- 23 (d) having submitted to and produced a negative result on a drug test within 60 days of
24 employment or any in-service drug screening required by the appointing agency that meets
25 the certification standards of the Department of Health and Human Services for Federal
26 Workplace Drug Testing Programs. A list of certified drug testing labs that meet this
27 requirement may be obtained, at no cost, at [https://www.samhsa.gov/programs-](https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list)
28 [campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list](https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list);
- 29 (e) submitting to a background investigation consisting of the verification of age and education
30 and a criminal history check of local, state, and national files;
- 31 (f) being truthful in providing information to the appointing agency and to the Standards
32 Division for the purpose of obtaining probationary or general certification;
- 33 (g) not having pending or outstanding felony charges that, if convicted of such charges, would
34 disqualify the applicant from holding such certification, pursuant to G.S. 17C-13; and
- 35 (h) not having engaged in any conduct that brings into question the truthfulness or credibility
36 of the officer, or involves "moral turpitude." "Moral turpitude" is conduct that is contrary
37 to justice, honesty, or morality, including conduct as defined in: In re Willis 288 N.C. 1,

215 S.E. 2d 771 appeal dismissed 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, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.

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

(5) have been examined and certified by a licensed surgeon, physician, physician assistant, or nurse practitioner to meet physical requirements necessary to fulfill the officer's particular responsibilities 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;

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

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

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

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

(6) have been administered 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 fulfill the responsibilities of the criminal justice officer.

(a) If a face-to-face, in-person interview 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.

1 (b) The psychological screening examination shall be given prior to the initial certification or
2 prior to the criminal justice officer performing any action requiring certification by the Commission.

3 (c) The psychological screening shall be valid for a period of one year prior to the criminal
4 justice officer's initial appointment and applies to any criminal justice officer seeking initial or
5 probationary certification.

6 ~~have been administered a psychological screening examination by a clinical psychologist or psychiatrist~~
7 ~~licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to~~
8 ~~practice in accordance with the rules and regulations of the United States Armed Forces within one~~
9 ~~year prior to employment by the employing agency to determine the officer's mental and emotional~~
10 ~~suitability to properly fulfill the responsibilities of the position;~~

11 (7) have been interviewed personally by the department head or the department head representative or
12 representatives to determine such things as the applicant's appearance, demeanor, attitude, and
13 ability to communicate; and

14 (8) make the following notifications:

15 (a) within 30 days of the qualifying event notify the Standards Division and the appointing
16 department head in writing of all criminal offenses for which the officer is charged or
17 arrested. This shall include traffic offenses identified in the Class B Misdemeanor Manual
18 and offenses of driving under the influence (DUI) or driving while impaired (DWI);

19 (b) within 30 days of the qualifying event notify the Standards Division and the appointing
20 department head in writing of all criminal offenses for which the officer pleads no contest
21 pleads guilty or of which the officer is found guilty. This shall include traffic offenses
22 identified in the Class B Misdemeanor Manual and offenses of driving under the influence
23 (DUI) or driving while impaired (DWI);

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

27 (d) within 30 days of the date the case was disposed of in court, the department head, provided
28 he or she has knowledge of the officer's arrests or criminal charges and final dispositions,
29 shall also notify the Standards Division of arrests or criminal charges and final disposition;

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

33 (9) The required notifications in this Rule shall be in writing and shall specify the nature of the offense
34 or order, the court in which the case was handled, the date of the arrest, criminal charge, or service
35 of the order, and the final disposition. The notification shall include a certified copy of the order or
36 court documentation and final disposition from the Clerk of Court in the county of adjudication. The
37 requirements of this Item shall be applicable at all times during which the officer is employed and

1 certified by the Commission and shall also apply to all applicants for certification. Receipt by the
2 Standards Division of a single notification, from the officer or the department head, shall be
3 sufficient notice for compliance with this Item.
4

5 *History Note: Authority G.S. 17C-6; 17C-10;*
6 *Eff. January 1, 1981;*
7 *Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995;*
8 *November 1, 1993; July 1, 1990;*
9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
10 *2019;*
11 *Amended Eff. January 01, 2022; October 1, 2020.*
12



TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

1. Rule-Making Agency: North Carolina Criminal Justice Education Training and Standards Commission

2. Rule citation & name: 12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

3. Action: ☐ Adoption ☒ Amendment ☐ Repeal

4. Was this an Emergency Rule: ☐ Yes Effective date:
 ☐ No

5. Provide dates for the following actions as applicable:

- a. Proposed Temporary Rule submitted to OAH: November 22, 2021
- b. Proposed Temporary Rule published on the OAH website: November 30, 2021
- c. Public Hearing date: December 28, 2021
- d. Comment Period: December 02, 2021-December 22, 2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): November 30, 2021
- f. Adoption by agency on: January 10, 2022
- g. Proposed effective date of temporary rule [if other than effective date established by G.S. 150B- 21.1(b) and G.S. 150B-21.3]:
- h. Rule approved by RRC as a permanent rule [See G.S. 150B-21.3(b2)]:

6. Reason for Temporary Action. Attach a copy of any cited law, regulation, or document necessary for the review.

- ☐ A serious and unforeseen threat to the public health, safety or welfare.
- ☒ The effective date of a recent act of the General Assembly or of the U.S. Congress.
Cite: Session Law 2021-138 Senate Bill 300 Section 7(c)
Effective date: September 2, 2021
- ☐ A recent change in federal or state budgetary policy.
Effective date of change:
- ☐ A recent federal regulation.
Cite:
Effective date:
- ☐ A recent court order.
Cite order:
- ☐ State Medical Facilities Plan.
- ☐ Other:

Explain: Senate Bill 300 is a comprehensive criminal justice reform that specifically requires psychological screening examination for criminal justice officers prior to employment. Section VII Law Enforcement Officer Entry Requirements, Ongoing Requirements, and Create a Physical Fitness Study, Section 7(c) states "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".

7. Why is adherence to notice and hearing requirements contrary to the public interest and the immediate adoption of the rule is required?

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8. Rule establishes or increases a fee? (See G.S. 12-3.1)

☐ Yes

Agency submitted request for consultation on:
Consultation not required. Cite authority:

☒ No

9. Rule-making Coordinator: Charminique D. Williams

Phone: (919) 779-8206

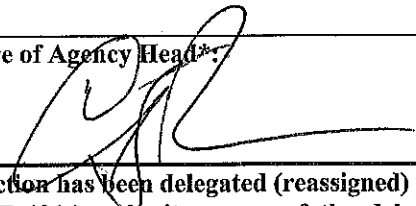
E-Mail: cdwilliams@ncdoj.gov

Agency contact, if any:

Phone:

E-Mail:

10. Signature of Agency Head:



* 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: Chris Blue

Title: Commission Chair

E-Mail: CBLUE@townofchapelhill.org

RULES REVIEW COMMISSION USE ONLY

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

REQUEST FOR TECHNICAL CHANGE

AGENCY: North Carolina Criminal Justice Education Training and Standards Commission

RULE CITATION: 12 NCAC 09G .0205

DEADLINE FOR RECEIPT: Tuesday, January 18, 2022 at noon

PLEASE NOTE: *This request may extend to several pages. Please be sure you have reached the end of the document.*

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may call our office to inquire concerning the staff recommendation.

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

Paragraph (b), lines 14-16, and (b)(1) and (2) repeat G.S. 17C-10(c), as amended by S.L. 2021-138. Rather than repeating statute, please say something like "have been administered a psychological screening examination in accordance with G.S. 17C-10(c)."

G.S. 17C-10(c), as amended by S.L. 2021-138 says that the psychological examination requirement shall be given before initial certification and prior to "any action requiring certification by the Commission." (b)(3) references "initial or probationary certification." Is "probationary certification" the only other "action requiring certification by the Commission"? How do these go together?

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

Amber May
Commission Counsel
Date submitted to agency: January 14, 2022

12 NCAC 09G .0205 is proposed for amendment under temporary procedures as follows:

12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS

(a) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall have been examined and certified within one year prior to employment with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice by a physician licensed in North Carolina, physician's assistant, or nurse practitioner to meet the physical requirements to fulfill the officer's particular responsibilities as stated in the essential job functions.

(b) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall have been administered ~~within one year prior to employment with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice~~ a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina ~~to determine the officer's mental and emotional suitability to fulfill the officer's particular responsibilities as stated in the essential job functions.~~ a psychological screening examination, including a face-to-face, [in person] in-person interview conducted by a licensed psychologist to determine the criminal justice officer's psychological suitability to fulfill the responsibilities of the criminal justice officer.

(1) If a face-to-face, in-person interview 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.

(2) The psychological screening examination shall be given prior to the initial certification or prior to the criminal justice officer performing any action requiring certification by the Commission.

(3) The psychological screening shall be valid for a period of one year prior to the criminal justice officer's initial appointment and applies to any criminal justice officer seeking initial or probationary certification.

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

Temporary Adoption Eff. January 1, 2001;

Eff. August 1, 2002;

Amended Eff. January 1, 2015; April 1, 2009; August 1, 2004;

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

Amended Eff. January 01, 2022.