



STATE OF NORTH CAROLINA
OFFICE OF ADMINISTRATIVE HEARINGS

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Raleigh, NC 27609-6285

September 21, 2018

Charminique Williams, Rulemaking Coordinator
Criminal Justice Education and Training Standards Commission
Sent via email only to: cdwilliams@ncdoj.gov

Re: Objection to Rule 12 NCAC 09G .0103
Extension of the Period of Review for Rules 12 NCAC 09B .0101, .0203, .0301;
09G .0102, .0304, .0504, .0505, and .0701

Dear Ms. Williams:

At its meeting yesterday, the Rules Review Commission objected to Rule 12 NCAC 09G .0403 in accordance with G.S. 150B-21.10.

The Commission objected the Rule based upon ambiguity and a lack of statutory authority. Specifically, the Commission found that the agency lacks authority to require the items in Subparagraphs (a)(2) (as it relates to repealed rules, which is also unclear as written), (a)(3), (a)(4) (as it relates to the effect on existing decisions, which is also unclear as written), (a)(5), (a)(6), and (a)(7). The Commission also found that Paragraph (c) is unclear as written, as it relates to a cross-reference that does not exist. Finally, in Paragraph (d), the agency did not present any statutory authority that it allowed it to set the deadline to request a contested case at 30 days.

Please respond to this objection in accordance with the provisions of G.S. 150B-21.12.

The Rules Review Commission extended the period of review for Rules 12 NCAC 09B .0101, .0203, .0301 and 12 NCAC 09G .0102, .0304, .0504, .0505, and .0701 in accordance with G.S. 150B-21.10. They did so in response to a request from the agency to extend the period in order to allow the agency to address requested technical changes and submit the rewritten rules at a later meeting.

Pursuant to G.S. 150B-21.13, when the Commission extends the period of review, it is required to approve or object to rules or call a public hearing on the same within 70 days.

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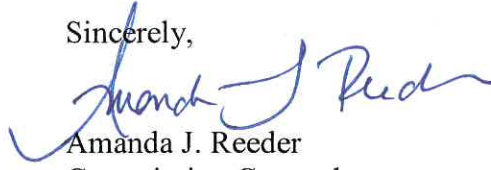
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919/431-3036
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If you have any questions regarding the Commission's actions, please let me know.

Sincerely,

A handwritten signature in blue ink, appearing to read "Amanda J. Reeder", is written over the typed name.

Amanda J. Reeder
Commission Counsel

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0101

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In Item (3), line 12, replace "17C-10 and as" with "17-10, as"

In (3)(b), line 14, I do not understand the cross-reference. I don't see that this Rule defines the term "misdemeanors" Why not cite to Rule 09A .0103(24)?

In (3)(c), line 19, delete the parenthesis before "http:"

Also on line 19, this link no longer works. Why not just refer to <http://www.gpo.gov>?

On lines 19 to 20, I suggest you replace "would prohibit" with "prohibits"

In (3)(e), line 28, by "state" do you mean NC, or do you mean all states? If you mean "NC" then please capitalize the term.

In (3)(f), what is "truthful"? Does your regulated public know?

In (3)(h), Page 2, line 4, please end the sentence with a semicolon.

In (4), line 5, by "state" do you mean NC, or do you mean all states? If you mean "NC" then please capitalize the term.

In (5), line 8, define "properly"

On line 8, by "particular" do you mean "individual"? If so, why not state that?

Is the screening required by Item (5) not the same screening required by (3)(d)? Why are you reciting it two separate places in the Rule?

In (5)(f), line 28, what is the difference between a federal rule and a federal regulation? In NC, we refer to federal regulations and State rules. I suggest deleting "rules" here.

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

In (6), line 34, define “properly”

In (7), line 35, state “his or her representatives”

*And in Item (7), this determination will be entirely up to the Department head or representatives?
There is no guidance in this Rule on what will qualify?*

In (8), Page 3, line 2, insert a comma after “guilty to” and “guilty of”

On line 2, I believe the term is “Domestic Violence Protective Orders”

On line 4, why do you need “specifically include”? You already state that everything is included except minor traffic offenses.

On line 5, please put “minor traffic offense” in quotation marks since you are defining it. So, “A “minor traffic offense” is defined...”

On line 7, please state “G.S. Chapter 20 (Motor Vehicles)” if you need to retain the name. Or use the language you used in Rule .02023(j), “G.S. 20 (Motor Vehicles)”

On line 8, replace “which” with “that”

Also on line 8, delete “expressly”

On line 8, G.S. 20-139 was repealed in 1983. Please update the citation.

On line 9, G.S. 20-28(b) was repealed in 1993. Please update the citation.

On line 12, what do you mean by “court in which the case was handled”? Do you mean the county or the level? And I suggest replacing “in which” with “where”

On line 19, state “he or she”

On line 21, so that I’m clear – you only have to be notified by the executive officer of the criminal charge after the final disposition? Not before it goes to court?

On lines 21-23, how will the individuals know that the Division already received the notification?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

12 NCAC 09B .0101 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

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

SECTION .0100 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE EMPLOYMENT

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

Every criminal justice officer employed by an agency in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be at least 20 years of age;
- (3) be of good moral character pursuant to G.S. 17C-10 and as evidenced by the following:
 - (a) not having been convicted of a felony;
 - (b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for five years or the completion of any corrections supervision imposed by the courts, whichever is later;
 - (c) not having been convicted of an offense that, under 18 U.S.C. 922, incorporated by reference with subsequent amendments and editions (found at no cost at (<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18-part1-chap44-sec922.pdf>), would prohibit the possession of a firearm or ammunition;
 - (d) having submitted to and produced a negative result on a drug test within 60 days of employment or any in-service drug screening required by the appointing agency that meets the certification standards of the Department of Health and Human Services for Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet this requirement may be obtained, at no cost, at (<https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list>);
 - (e) submitting to a background investigation consisting of the verification of age and education and a criminal history check of local, state, and national files;
 - (f) being truthful in providing information to the appointing agency and to the Standards Division for the purpose of obtaining probationary or general certification;
 - (g) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the applicant from holding such certification, pursuant to North Carolina General Statute 17C-13; and
 - (h) not engage in any conduct that brings into question the truthfulness or credibility of the officer, or involves "moral turpitude." "Moral Turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: re Willis, ~~299~~ 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); in re 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 properly 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 reliable initial and confirmatory tests as may, from time to time, be 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;
 - (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 by a clinical psychologist or psychiatrist licensed to practice in North Carolina or by a clinical psychologist or psychiatrist authorized to practice in accordance with the rules and regulations of the United States Armed Forces within one year prior to employment by the employing agency to determine the officer's mental and emotional suitability to properly fulfill the responsibilities of the position;
- (7) have been interviewed personally by the Department head or his representative or representatives to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate;

(8) notify the Standards Division of all criminal offenses that the officer is arrested for or charged with, pleads no contest to, pleads guilty to or is found guilty of as well as Domestic Violence Orders (50B) that are issued by a judicial official. This shall include all criminal offenses except minor traffic offenses and shall specifically include any offense of Driving Under The Influence (DUI) or Driving While Impaired (DWI). A minor traffic offense is defined, for purposes of this Subparagraph, as an offense for which the maximum punishment allowable by law is 60 days or less. Other offenses under Chapter 20 (Motor Vehicles) of the General Statutes of North Carolina or similar laws of other jurisdictions which shall be reported to the Standards Division expressly include G.S. 20-139 (persons under influence of drugs), G.S. 20-28(b)(driving while license permanently revoked or permanently suspended), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Subparagraph shall be in writing and shall specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the final disposition, and the date thereof. The notifications required under this Subparagraph shall be received by the Standards Division within 30 days of the date of arrest or charge and of case disposition. The requirements of this Subparagraph shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applicants for certification. Officers required to notify the Standards Division under this Subparagraph shall also make the same notification to their employing or appointing executive officer within 20 days of the date the case was disposed of in court. The executive officer, provided he has knowledge of the officer's arrests or criminal charges and final dispositions, shall also notify the Standards Division of all arrests or criminal charges and final dispositions within 30 days of the date the case was disposed of in court. Receipt by the Standards Division of a single notification, from either the officer or the executive officer, shall be sufficient notice for compliance with this Subparagraph.

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

Eff. January 1, 1981;

*Amended Eff. **October 1, 2018**; April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995; November 1, 1993; July 1, 1990.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09B .0203

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In (e), line 20, what is this Skills Inventory? How does one take it? How does one register to take it? Is there a cost?

In (g), Page 2, line 6, who determines what is "little" coursework?

In (i)(5), line 23, insert an "or" after "enrollment;"

In (j), line 33, I believe the term is "Domestic Violence Protective Orders"

On Page 3, line 8, what do you mean by "court in which the case was handled"? Do you mean the county or the level? And I suggest replacing "in which" with "where"

On line 9, I believe the term is "Domestic Violence Protective Orders"

On line 10, why do you have "G.S." before 50B, when you don't do that in Rule .0101?

So that I'm clear – since line 11 says the notification must be received after disposition in courts, any arrest that does not result in court action will not be reported?

On line 13, how does a cross-reference to Rule 12 NCAC 10B apply here? Those are candidates seeking certification from a different agency.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

12 NCAC 09B .0203 is amended as published in 32: 24 NCR 2644-2661 as follows:

12 NCAC 09B .0203 ADMISSION OF TRAINEES

(a) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course who is not a citizen of the United States.

(b) The school shall not admit any individual younger than 20 years of age as a trainee in any non-academic basic criminal justice training course. Individuals under 20 years of age may be granted authorization for early enrollment as trainees in a presentation of the Basic Law Enforcement Training Course with prior written approval from the Director of the Standards Division. The Director shall approve early enrollment if the individual will be 20 years of age prior to the date of the State Comprehensive Examination for the course.

(c) The school shall give priority admission in certified criminal justice training courses to individuals holding full-time employment with criminal justice agencies.

(d) The school shall not admit any individual as a trainee in a presentation of the "Criminal Justice Instructor Training Course" who does not meet the education and experience requirements for instructor certification under Rule .0302 of this Subchapter within 60 days of successful completion of the Instructor Training State Comprehensive Examination.

(e) The school shall not admit an individual, including partial or limited enrollees, as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual, within one year prior to admission to the Basic Law Enforcement Training Course, scores at or above mastery level on the NROC Edready™ Skills Inventory for English or places into course DRE 098 or above at a North Carolina Community College as a result of taking the Reading and English component of the North Carolina Diagnostic Assessment and Placement test as approved by the State Board of Community Colleges on October 17, 2014, (<http://www.nccommunitycolleges.edu/state-board-community-colleges/meetings/october-17-2014>), or has taken the reading component of a nationally standardized test ~~within one year prior to admission to Basic Law Enforcement Training~~ and has scored at or above the tenth grade level or the equivalent. For the purposes of this Rule:

(1) Partial or limited enrollee does not include enrollees who hold, or have held within 12 months prior to the date of enrollment, general certification pursuant to 12 NCAC 09C .0304.

(2) A "nationally standardized test" means a test that:

(A) reports scores as national percentiles, stanines, or grade equivalents; and

(B) compares student test results to a national norm.

(f) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training Course unless the individual has provided to the School Director a medical examination report, completed by a physician licensed to practice medicine in North Carolina, a physician's assistant, or a nurse practitioner, to determine the individual's fitness to perform the essential job functions of a criminal justice officer. The Director of the Standards Division shall grant an exception to this standard for a period of time not to exceed the commencement of the physical

1 fitness topical area when failure to receive the medical examination report is not due to neglect on the part of the
2 trainee.

3 (g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training
4 Course unless the individual is a high school, college, or university graduate or has received a high school equivalency
5 credential recognized by the issuing state. High school diplomas earned through correspondence enrollment in an
6 entity that charges a fee and requires the individual to complete little or no education or coursework to obtain a high
7 diploma shall not be recognized toward the educational requirements.

8 (h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training Course
9 unless the individual has provided the School Director a certified criminal record check for local and state records for
10 the time period since the trainee has become an adult and from all locations where the trainee has resided since
11 becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state
12 criminal record check shall satisfy this requirement.

13 (i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training
14 Course who has been convicted of the following:

- 15 (1) a felony;
- 16 (2) a crime for which the punishment could have been imprisonment for more than two years;
- 17 (3) a crime or unlawful act defined as a Class B Misdemeanor within the five year period prior to the
18 date of application for employment, unless the individual intends to seek certification through the
19 North Carolina Sheriffs' Education and Training Standards Commission;
- 20 (4) four or more crimes or unlawful acts defined as Class B Misdemeanors, regardless of the date of
21 conviction;
- 22 (5) four or more crimes or unlawful acts defined as Class A Misdemeanors, except the trainee may be
23 enrolled if the last conviction date occurred more than two years prior to the date of enrollment;
- 24 (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the
25 date of conviction, unless the individual intends to seek certification through the North Carolina
26 Criminal Justice Education and Training Standards Commission.

27 (j) Individuals charged with crimes specified in Paragraph (i) of this Rule may be admitted into the Basic Law
28 Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of
29 the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice
30 officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued.
31 Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall
32 notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to,
33 pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial
34 official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses
35 except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While
36 Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the
37 maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or similar

laws of other jurisdictions that shall be reported to the School Director are G.S 20-138.1 (driving while under the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5) (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S. 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the Domestic Violence Order (G.S. 50B), and the final disposition and the date thereof. The notifications required under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

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

Eff. January 1, 1981;

Amended Eff. January 1, 2019; April 1, 2018; January 1, 2017; February 1, 2016; November 1, 2015; March 1, 2015; January 1, 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1, 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09B .0301

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In (b), line 11, what is required to “document” this?

In (c), line 16, define “successfully”

In (d), line 18 and elsewhere these terms are used, what are “knowingly” and “willfully”?

In (e)(3), line 32, the name of the manual in Rule 09B .0209 is “Instructor Training Manual”

In (e)(5), line 35, please capitalize “Commission” in “Commission-mandated”

Consider breaking the language on lines 36 to page 2, line 4, further down into a list.

On line 37, replace “which” with “that”

On Page 2, line 1, what is the use of the cross reference to 09A .0204? What do you mean here?

In (8), line 8, why is this written differently from Rule 09B .0101(3)(h)? That rule states that the case defines “moral turpitude” Which is correct?

On line 9, should this read “in re State v. Harris” like it does in Rule .0101(3)(h)?

On line 13, define “effectively”

In (11), line 20, Rule 12 NCAC 02A .0204 has never existed. What cross-reference do you intend to cite to here?

In (12), line 22, define “material”

In (f), what authority are you relying upon to have the Commission require all certified law enforcement officers, even those not certified by them, to require this reporting? Are you relying upon G.S. 17C-6(a)(1)?

On line 26, you state “or” and on line 27, you state “and”. Should the initial “or” be deleted and the “and” be replaced with “or”?

Amanda J. Reeder
Commission Counsel

Date submitted to agency: August 27, 2018

On line 29, remove the hyphen between “30” and “days”

Also on line 29, since you refer to a “person” (singular) on line 24, replace “They” with “He or she”

On line 30, you do not capitalize “certification” following “General Instructor” but you do on Page 1, line 9. Shouldn’t they be the same?

On line 31, replace “their” with “his or her”

On line 34, I do not understand this cross-reference. That Rule only addresses Specialized Instructor Certification.

In (f)(2), line 36, replace “they” with “he or she”

On Page 3, line 1, capitalize “Commission” and hyphenate the term “Commission-approved”

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

12 NCAC 09B .0301 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

SECTION .0300 - MINIMUM STANDARDS FOR CRIMINAL JUSTICE INSTRUCTORS

12 NCAC 09B .0301 CERTIFICATION OF INSTRUCTORS

(a) A person participating in a Commission-certified criminal justice training course or program as an instructor, teacher, professor, lecturer, or other participant making presentations to the class shall first be certified by the Commission as an instructor.

(b) The Commission shall certify instructors under the following categories: General Instructor Certification, Specialized Instructor Certification, or Professional Lecturer Certification as outlined in Rules .0302, .0304 and 0306 of this Section. Instructor certification shall be granted on the basis of documented qualifications of experience, education, and training in accord with the requirements of this Section and as stated on the applicant's Request for Instructor Certification Form.

(c) In addition to all other requirements of this Section, each instructor certified by the Commission to teach in a Commission-certified course shall remain competent in his or her specialized areas. Such competence shall include remaining current in the instructor's area of expertise, which shall be demonstrated by attending and successfully completing all updated instructor training courses required by the Commission.

(d) If a person certified as an instructor by the Commission is found to have knowingly and willfully violated any provision or requirement of the rules in this Subchapter, the Commission shall take action to correct the violation and to ensure that the violation does not recur, including:

- (1) issuing an oral warning and request for compliance;
- (2) issuing a written warning and request for compliance;
- (3) issuing an official written reprimand;
- (4) suspending the individual's certification for a specified period of time or until acceptable corrective action is taken by the individual; and
- (5) revoking the individual's certification.

(e) The Commission shall deny, suspend, or revoke an instructor's certification if the Commission finds that the person:

- (1) has failed to meet and maintain any of the requirements for qualification;
 - (2) has failed to remain knowledgeable in the person's areas of expertise;
 - (3) has failed to deliver training in a manner consistent with the instructor lesson plans outlined in the "Basic Instructor Training Manual" as found in 12 NCAC 09B .0209;
 - (4) has failed to follow specific guidelines outlined in the "Basic Law Enforcement Training Course Management Guide" as found in 12 NCAC 09B .0205;
 - (5) has demonstrated unprofessional personal conduct in the delivery of commission-mandated training.
- For the purposes of this Subparagraph, unprofessional personal conduct means an act that is: job-related conduct which constitutes a violation of State or federal law; conviction or commission of a

criminal offense, as set out in 12 NCAC 09A .0204; the willful violation of Rules of this Chapter; conduct that is detrimental to instruction in the Commission's mandated courses; the abuse of a client or student whom the instructor is teaching or supervising or falsification of an instructor application or in other employment documentation;

(6) has demonstrated instructional incompetence;

(7) has knowingly and willfully obtained or attempted to obtain instructor certification by deceit, fraud, or misrepresentation;

(8) has failed to meet or maintain good moral character as defined in: re Willis, ~~299~~ 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 ~~(9175);(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, and as required to effectively discharge the duties of a criminal justice instructor;

(9) has failed to deliver training in a manner consistent with the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program as found in 12 NCAC 09H .0102; or

(10) has knowingly and willfully aided or attempted to aid any person in obtaining qualification or certification under the Qualified Retired Law Enforcement Officers Firearms Qualification Certification Program by deceit, fraud, or misrepresentation;

(11) has committed or been convicted of an offense which could result in the denial, suspension, or revocation of an officer's law enforcement certification, pursuant to 12 NCAC 02A .0204 or 12 NCAC 09G .0504; or

(12) has knowingly made a material misrepresentation of any information required for certification or accreditation.

(f) When a person certified as a law enforcement officer by the North Carolina Criminal Justice Education and Training Standards Commission (Commission), the North Carolina Sheriffs Education and Training Standards Commission (Sheriffs' Commission), or the North Carolina Department of Insurance, Office of State Fire Marshal, Fire Rescue Commission (Fire Commission) and Office of Emergency Medical Services has his or her law enforcement officer or fire and rescue certification suspended or revoked by their respective Commission, that person shall report the suspension or revocation to the Criminal Justice Standards within 30-days. They shall also have their General Instructor certification (if applicable) similarly and automatically suspended or revoked for the same time period as their respective Commission certification.

(1) This suspension or revocation of the General Instructor certification shall also include suspension or revocation to any Commission recognized Specialized or additional instructor certification, as outlined in 12 NCAC 09B .0304.

(2) If the term of suspension or revocation exceeds the expiration date of the instructor's initial certification expiration date, they shall forfeit their certifications as a General Instructor and Specialized Instructor and shall be required to obtain certification pursuant to the requirements of

1 12 NCAC 09B .0302 before any instruction may be delivered in any commission approved or
2 mandated training, including the completion of a subsequent General Instructor's training course in
3 its entirety.

- 4 (3) If the term of suspension or revocation does not exceed the expiration date of the instructor's initial
5 certification expiration date, the instructor shall be reinstated as a General Instructor only upon
6 reinstatement of his or her law enforcement officer certification by the Commission. The terms of
7 renewal for the existing General Instructor and Specialized Instructor certifications shall remain
8 subject to all renewal requirements pursuant to 12 NCAC 09B .0303(c) by the next immediate
9 expiration date.

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

12 *Eff. January 1, 1981;*

13 *Amended Eff. October 1, 2018; October 1, 2017; October 1, 2009; August 1, 2004; April 1, 1999;*
14 *July 1, 1991; January 1, 1985.*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09G .0102

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In Item (10), what are you doing? Reclassifying the crimes? I ask because (10)(c), Page 2, line 5, is classified as a felony in statute. There are others that are only felonies in the NC General Statutes. So, what is the intent here and what is your authority to do this?

In (10)(d), Page 2, lines 7-8, what is the use of the language in parenthesis?

In (m), line 18, and (n), line 19, why are you citing to the overall Article but then the specific statute beside it?

In (ll), Page 3, line 8, why are you citing to the entire article but then giving a specific statute?

In (mm), line 9, why aren't you citing to (d), (e), and (f) with the initial citation, like you do in (nn) on line 11.

On line 11, please underline the addition of "(nn)"

In (vv), line 22, please correct the citation and state "14-288.6"

In (ccc), lines 31-32, you are specifying (a) and (b), but that is the entire statute. Why are you breaking them out here?

In (eee), lines 34-35, you are missing a parenthesis.

In (ooo), Page 4, line 11, there is no G.S. 20-138.2l. What is the proper citation?

In (www), line 19, please correct the citation to "14-111.4" And do you not want to move this to the portion of the Rule that sets forth the G.S. 14 crimes?

In (zzz), line 22, so that I'm clear – you won't consider this a misdemeanor when it's a Class 3 misdemeanor as set forth in the statute?

In (ssss), Page 5, line 18, update the cross-reference to "(vvvv)" to "(rrrr)"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

In (17), Page 6, line 4, what is “successful”?

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

12 NCAC 09G .0102 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

12 NCAC 09G .0102 DEFINITIONS

The following definitions apply throughout this Subchapter only:

- (1) "Commission of an offense" means a finding by the North Carolina Criminal Justice Education and Training Standards Commission or an administrative body that a person performed the acts necessary to satisfy the elements of a specified offense.
- (2) "Convicted" or "Conviction" means, the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other duly constituted, established adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (3) "Correctional Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, responsible for the custody of inmates or offenders.
- (4) "Corrections Officer" means either or both of the two classes of officers employed by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice: correctional officer or probation/parole officer.
- (5) "Criminal Justice System" means the whole of the State and local criminal justice agencies including the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (6) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (7) "Educational Points" means points earned toward the State Correction Officers' Professional Certificate Program for studies completed, with passing scores achieved, for semester hour or quarter hour credit at a regionally accredited institution of higher education. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (8) "High School" means a high school that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (9) "In-Service Training Coordinator" means a person designated by a Criminal Justice Agency head to administer the agency's In-Service Training program.
- (10) "Misdemeanor" for corrections officers means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses for corrections officers are classified by the Commission as the following as set forth in G.S. or other state or federal law:
 - (a) 14-2.5 Punishment for attempt (offenses that are Class A-1 misdemeanor)

1	(b)	14-27.7	Intercourse and sexual offenses with certain victims (If
2			defendant is school personnel other than a teacher, school administrator,
3			student teacher, or coach)
4	(e) <u>(b)</u>	14-32.1(f)	Assault on handicapped persons
5	(d) <u>(c)</u>	14-32.2(b)(4)	Patient abuse and neglect, punishments
6	(e) <u>(d)</u>	14-32.3	Exploitation by caretaker of disabled/elder adult in domestic setting;
7			resulting in loss of less than one thousand dollars (\$1000) (August 1,
8			2001-December 1, 2005. Repealed December 1, 2005)
9	(f) <u>(c)</u>	14-33(b)(9)	Assault, battery against sports official
10	(g) <u>(f)</u>	14-33(c)	Assault, battery with circumstances
11	(h) <u>(g)</u>	14-34	Assault by pointing a gun
12	(i) <u>(h)</u>	14-34.6(a)	Assault on Emergency Personnel
13	(j) <u>(i)</u>	14-54	Breaking or Entering into buildings generally (14-54(b))
14	(k) <u>(j)</u>	14-72	Larceny of property; receiving stolen goods etc.; not more than one
15			thousand dollars (\$1000.00)(14-72(a))
16	(l) <u>(k)</u>	14-72.1	Concealment of merchandise (14-72.1(e); third or subsequent offense)
17	(m) <u>(l)</u>	14-76	Larceny, mutilation, or destruction of public records/papers
18	(n) <u>(m)</u>	CH 14 Art. 19A	False/fraudulent use of credit device (14-113.6)
19	(o) <u>(n)</u>	CH 14 Art. 19B	Financial transaction card crime (14-113.17(a))
20	(p) <u>(o)</u>	14-114(a)	Fraudulent disposal of personal property on which there is a security
21			interest
22	(q) <u>(p)</u>	14-118	Blackmailing
23	(r) <u>(q)</u>	14-118.2	Obtaining academic credit by fraudulent means (14-118.2(b))
24	(s) <u>(r)</u>	14-122.1	Falsifying documents issued by a school (14-122.1(c))
25	(t) <u>(s)</u>	14-127	Willful and wanton injury to real property
26	(u) <u>(t)</u>	14-160	Willful and wanton injury to personal property greater than two hundred
27			dollars (\$200.00)(14-160(b))
28	(v) <u>(u)</u>	14-190.5	Preparation of obscene photographs
29	(w) <u>(v)</u>	14-190.9	Indecent Exposure
30	(x) <u>(w)</u>	14-190.14	Displaying material harmful to minors (14-190.14(b))
31	(y) <u>(x)</u>	14-190.15	Disseminating harmful material to minors (14-190.15(d))
32	(z) <u>(y)</u>	14-202.2	Indecent liberties between children
33	(aa) <u>(z)</u>	14-202.4	Taking indecent liberties with a student
34	(bb) <u>(aa)</u>	14-204	Prostitution (14-207; 14-208)
35	(ee) <u>(bb)</u>	14-223	Resisting officers
36	(dd) <u>(cc)</u>	14-225	False, etc., reports to law enforcement agencies or officers
37	(ee) <u>(dd)</u>	14-230	Willfully failing to discharge duties

1	(ff) <u>(cc)</u> 14-231	Failing to make reports and discharge other duties
2	(gg) <u>(ff)</u> 14-232	Swearing falsely to official records
3	(hh) <u>(gg)</u> 14-239	Allowing prisoners to escape <u>escape</u> ; punishment
4	(ii) <u>(hh)</u> 14-255	Escape of working prisoners from custody
5	(jj) <u>(ii)</u> 14-256	Prison breach and escape
6	(kk) <u>(jj)</u> 14-258.1(b)	Furnishing certain contraband to inmates
7	(ll) <u>(kk)</u> 14-259	Harboring or aiding certain persons
8	(mm) (ll)CH 14 Art. 34	Persuading inmates to escape; harboring fugitives (14-268)
9	(nn) <u>(mm)</u> 14-269.2	Weapons on campus or other educational property (14-269.2(d), (e) and
10		(f))
11	(oo) <u>(nn)</u> 14-269.3(a)	Weapons where alcoholic beverages are sold and consumed
12	(pp) <u>(oo)</u> 14-269.4	Weapons on state property and in courthouses
13	(qq) <u>(pp)</u> 14-269.6	Possession and sale of spring-loaded projectile knives prohibited (14-
14		269.6(b))
15	(rr) <u>(qq)</u> 14-277	Impersonation of a law-enforcement or other public officer verbally, by
16		displaying a badge or insignia, or by operating a red light (14-277 (d1)
17		and (e))
18	(ss) <u>(rr)</u> 14-277.2(a)	Weapons at parades, etc., prohibited
19	(tt) <u>(ss)</u> 14-277.3A	Stalking (14-277.3(b))
20	(uu) <u>(tt)</u> 14-288.2(b)	Riot
21	(vv) <u>(uu)</u> 14-288.2(d)	Inciting to riot
22	(ww) <u>(vv)</u> 14.288.6(a)	Looting; trespassing during emergency
23	(xx) 14 288.7(c)	Transporting weapon or substance during emergency
24	(yy) 14 288.9(c)	Assault on emergency personnel; punishments
25	(zz) <u>(ww)</u> 14-315(a)	Selling or giving weapons to minors
26	(aaa) <u>(xx)</u> 14-315.1	Storage of firearms to protect minors
27	(bbb) <u>(yy)</u> 14-316.1	Contributing to delinquency
28	(ccc) <u>(zz)</u> 14-318.2	Child abuse
29	(ddd) <u>(aaa)</u> 14-360	Cruelty to animals
30	(eee) <u>(bbb)</u> 14-361	Instigating or promoting cruelty to animals
31	(fff) <u>(ccc)</u> 14-401.14	Ethnic intimidation; teaching any technique to be used for (14-401.14(a)
32		and (b))
33	(ggg) <u>(ddd)</u> 14-454(a) or (b)	Accessing computers
34	(hhh) <u>(eee)</u> 14-458	Computer trespass (Damage less than two thousand five hundred dollars
35		(\$2500.00)
36	(iii) 15A 266.11	Unauthorized use of DNA databank; willful disclosure (15A 266.11(a)
37		and (b))

1	(jjj) <u>(fff)</u> 15A-287	Interception and disclosure of wire etc. communications
2	(kkk) <u>(ggg)</u> 15B-7(b)	Filing false or fraudulent application for compensation award
3	(lll) <u>(hhh)</u> 18B-902(c)	False statements in application for ABC permit (18B-102(b))
4	(mmm) <u>(iii)</u> 20-37.8(a) & (c)	Fraudulent use of a fictitious name for a special identification card
5	(nnn) <u>(jjj)</u> 20-102.1	False report of theft or conversion of a motor vehicle
6	(ooo) <u>(kkk)</u> 20-111(5)	Fictitious name or address in application for registration
7	(ppp) <u>(lll)</u> 20-130.1	Use of red or blue lights on vehicles prohibited (20-130.1(e))
8	(qqq) <u>(mmm)</u> 20-137.2	Operation of vehicles resembling law-enforcement vehicles (20-
9		137.2(b))
10	(rrr) <u>(nnn)</u> 20-138.1	Driving while impaired (punishment level 1 (20-179(g)) or 2 (20-179(h))
11	(sss) <u>(ooo)</u> 20-138.2I	Impaired driving in commercial vehicle (20-138.2(e))
12	(ttt) <u>(ppp)</u> 20-141.5(a)	Speeding to elude arrest
13	(uuu) <u>(qqq)</u> 20-166(b)	Duty to stop in event of accident or collision
14	(vvv) <u>(rrr)</u> 20-166(c)	Duty to stop in event of accident or collision
15	(www) <u>(sss)</u> 20-166(c)1	Duty to stop in event of accident or collision
16	(xxx) <u>(ttt)</u> 50B-4.1	Knowingly violating valid protective order
17	(yyy) <u>(uuu)</u> 58-33-105	False statement in applications for insurance
18	(zzz) <u>(vvv)</u> 58-81-5	Careless or negligent setting of fires
19	(aaaa) <u>(www)</u> 62A-12	<u>14.111.4</u> Misuse of 911 system
20	(bbbb) <u>(xxx)</u> 90-95(d)(2)	Possession of schedule II, III, IV
21	(eeee) <u>(yyy)</u> 90-95(d)(3)	Possession of Schedule V
22	(dddd) <u>(zzz)</u> 90-95(d)(4)	Possession of Schedule VI (when punishable as Class 1 misdemeanor)
23	(eeee) <u>(aaaa)</u> 90-95(e)(4)	Conviction of 2 or more violations of Art. 5
24	(ffff) <u>(bbbb)</u> 90-95(e)(7)	Conviction of 2 or more violations of Art. 5
25	(gggg) <u>(cccc)</u> 90-113.22	Possession of drug paraphernalia (90-113.22(b))
26	(hhhh) <u>(dddd)</u> 90-113.23	Manufacture or delivery of drug paraphernalia (90-113.23(c))
27	(iiii) <u>(eeee)</u> 97-88.2(a)	Misrepresentation to get worker's compensation payment
28	(jjjj) <u>(ffff)</u> 108A-39(a)	Fraudulent misrepresentation of public assistance
29	(kkkk) <u>(gggg)</u> 108A-53	Fraudulent misrepresentation of foster care and adoption assistance
30		<u>payments electronic food and nutrition benefits</u>
31	(llll) <u>(hhhh)</u> 108A-64(a)	Medical assistance recipient fraud; less than four hundred dollars
32		(\$400.00)(108-64(c)(2))
33	(mmmm) <u>(iiii)</u> 108A-80	Recipient check register/list of all recipients of AFDC and state-county
34		special assistance (108A-80(b))
35	(nnnn) <u>(jjjj)</u> 108A-80	Recipient check register/ list of all recipients of AFDC and state-county
36		special assistance; political mailing list (108A-80(c))
37	(oooo) <u>(kkkk)</u> 113-290.1(a)(2)	Criminally negligent hunting; no bodily disfigurement

~~(pppp)~~ ~~(llll)~~ 113-290.1(a)(3) Criminally negligent hunting; bodily disfigurement

~~(qqqq)~~ ~~(mmmm)~~ 113-290.1(a)(4) Criminally negligent hunting; death results

~~(rrrr)~~ ~~(nnnn)~~ 113-290.1(d) Criminally negligent hunting; person convicted/suspended license

~~(ssss)~~ ~~(oooo)~~ 143-58.1(a) Use of public purchase or contract for private benefit (143-58.1(c))

~~(tttt)~~ ~~(pppp)~~ 148-45(d) Aiding escape or attempted escape from prison

~~(uuuu)~~ ~~(qqqq)~~ 162-55 Injury to prisoner by jailer

~~(vvvv)~~ ~~(rrrr)~~ Common-Law misdemeanors:

(i) Going Armed to the Terror of the People

(ii) Common-Law Mayhem

(iii) False Imprisonment

(iv) Common-Law Robbery

(v) Common-Law Forgery

(vi) Common-Law Uttering of Forged paper

(vii) Forcible Trespass

(viii) Unlawful Assembly

(ix) Common-Law Obstruction of Justice

~~(wwwww)~~ ~~(ssss)~~ Those offenses occurring in other jurisdictions that are comparable to the offenses specifically listed in (a) through (vvvv) of this Rule.

~~(xxxx)~~ ~~(tttt)~~ Any offense proscribed by 18 U.S.C. 922 (1996), (<http://www.gpo.gov/fdsys/pkg/USCODE-2011-title18/pdf/USCODE-2011-title18-partI-chap44-sec922.pdf>), that would prohibit possessing a firearm or ammunition.

(11) "Pilot Courses" means those courses approved by the Education and Training Committee, consistent with 12 NCAC 09G .0404, which are used to develop new training course curricula.

(12) "Probation/Parole Officer" means an employee of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, whose duties include supervising, evaluating, or otherwise instructing offenders placed on probation, parole, post release supervision, or assigned to any other community-based program operated by the Division of Adult Correction and Juvenile Justice.

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

(14) "School" means an institution, college, university, academy, or agency that offers penal or corrections training for correctional officers or probation/parole officers. "School" includes the corrections training course curricula, instructors, and facilities.

(15) "School Director" means the person designated by the Secretary of the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice to administer the School.

1 (16) "Standards Division" means the Criminal Justice Standards Division of the North Carolina
2 Department of Justice.

3 (17) "State Corrections Training Points" means points earned toward the State Corrections Officers'
4 Professional Certificate Program by successful completion of Commission-approved corrections
5 training courses. Twenty classroom hours of Commission-approved corrections training equals one
6 State Corrections training point.

7
8 *History Note:* *Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;*
9 *Temporary Adoption Eff. January 1, 2001;*
10 *Eff. August 1, 2002;*
11 *Amended Eff. October 1, 2018; January 1, 2017; January 1, 2015; April 1, 2009; August 1, 2004.*
12
13

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09G .0103

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In (a), line 4, are these procedures in G.S. 150B-20?

On line 5, how are these submitted? Electronically or via mail? What is the contact information for this?

In (a)(1), line 6, consider beginning this with an article

On line 6, insert a comma after "address"

G.S. 150B-20 requires rulemaking to establish the procedure for the public to submit the petition and the procedure the agency will use to consider the petition. What is the procedure the Commission will use? Is it set forth in another Rule?

What is your statutory authority to require (a)(3) through (7), especially in light of G.S. 150B-19.1?

In (b), I take it the Commission considers itself to be an occupational licensing agency because it is specifically mentioned in G.S. 93B?

In (b)(2) and (3), lines 16 and 17, either state who will determine this relevance or delete "insofar as relevant"

In (c), line 19, delete "incorporated by the Office of Administrative Hearings as"

On line 21, why are you citing to G.S. 150B-38(h) here?

On lines 21-22, replace the sentence you have with "These rules are incorporated by reference, including subsequent amendments and editions."

On line 22, delete "Provided, however, that" and begin the sentence "If"

On lines 24-25, please review the rules in 26 NCAC 03 to determine if this is the reference you want. Please note there is no 03 .0101(2) or .0102(a)(1).

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

In (d), line 26, what is your authority to set the appeal deadline at 30 days? I note that G.S. 150B-23(f) states:

§ 150B-23. Commencement; assignment of administrative law judge; hearing required; notice; intervention.

(f) Unless another statute or a federal statute or regulation sets a time limitation for the filing of a petition in contested cases against a specified agency, **the general limitation for the filing of a petition in a contested case is 60 days**. The time limitation, whether established by another statute, federal statute, or federal regulation, or this section, shall commence when notice is given of the agency decision to all persons aggrieved who are known to the agency by personal delivery or by the placing of the notice in an official depository of the United States Postal Service wrapped in a wrapper addressed to the person at the latest address given by the person to the agency. The notice shall be in writing, and shall set forth the agency action, and shall inform the persons of the right, the procedure, and the time limit to file a contested case petition. When no informal settlement request has been received by the agency prior to issuance of the notice, any subsequent informal settlement request shall not suspend the time limitation for the filing of a petition for a contested case hearing.

I realize that the statute I cited is in Article 3 of G.S. 150B, but where is your authority to set a 30 day deadline?

In the History Note, delete the reference to G.S. 150B-21.6.

In the History Note, line 31, this is not the proper way to insert the amended effective date. Put the newest date first.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

12 NCAC 09G .0103 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

12 NCAC 09G .0103 RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES

(a) In addition to the procedures set out in G.S. 150B-20, Petitions for Rule-Making shall be submitted to the Commission and shall contain:

- (1) petitioner's name, address and telephone number;
- (2) a draft of the proposed rule or rule change;
- (3) the reason for its proposal;
- (4) the effect of the proposal on existing rules or decisions;
- (5) data supporting the proposal;
- (6) practices likely to be affected by the proposal; and
- (7) a list or description of persons likely to be affected by the proposed rule.

(b) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge (as authorized in G.S. 150B-40) shall be governed by:

- (1) procedures set out in G.S. 150B, Article 3;
- (2) insofar as relevant, the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) insofar as relevant, the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(c) The rules establishing procedures for contested cases incorporated by the Office of Administrative Hearings as contained in 26 NCAC 03 are hereby incorporated by reference for contested cases for which this agency has authority to adopt rules under G.S. 150B-38(h). All such incorporations by reference shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. Provided, however, that if the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties given to the Chief Administrative Law Judge or the presiding Administrative Law Judge in 26 NCAC 03 and that 26 NCAC 03 .0101(2); .0102(a)(1) and .0103(b) shall not apply.

(d) An applicant for certification or a certified officer shall have ~~60~~ 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

History Note: *Authority* G.S. 17C-6; 150B-20; 150B-21.6; 150B-38(h); 150B-40;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, ~~2002~~, 2002; October 1, 2018

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09G .0304

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In (a), line 5, (c), line 14, and (e)(2), line 28, Rule 12 NCAC 09G .0413 was repealed in 2015. Please remove the reference and the "or" preceding it.

Also on these lines, I do not understand the cross-reference to Rule 12 NCAC 09G .0410, which is a waiver of training requirements. Is this the correct cross-reference?

In (a), line 5, you refer to the rules as "12 NCAC 09G" and on line 6, you state "in Rules X of this Subchapter." Please be consistent here and elsewhere you insert cross-references in rules.

In (b), line 9, what is "good standing"?

In (c), line 12, delete the comma after "who"

On line 13, delete the comma after "Department"

And I take it that by "Department" you mean "NC Department of Public Safety, Division of Adult Correction and Juvenile Justice"?

On line 13, rather than "may" do you mean "shall"? If not, under what circumstances will the certification not be reinstated when the certified officer moves into a non-certified position and it's not due to disciplinary actions?

In (e), line 20, what is contained in the Notice of Transfer? And is there a timeframe to submit it?

So that I'm clear – in (e)(1), the Standards Division will cancel the certification, and in (e)(2), it is the Commission that will grant a new certification? It won't be the same body?

In (e)(1), line 23, what is "documentary evidence"? And is this different from the "evidence" required in (e)(2), line 27?

On line 23, delete or define "requisite"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

In the History Note, line 34, this is not the proper way to insert the amended effective date. Put the newest date first.

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

12 NCAC 09G .0304 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

12 NCAC 09G .0304 GENERAL CERTIFICATION

(a) The Commission shall grant an officer General Certification when evidence is received by the Standards Division that an officer has completed the training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413 within the officer's probationary period and the officer has met all requirements for General Certification as specified in Rules .0202, .0203, .0204, .0205, .0206, .0302, and .0303 of this Subchapter.

(b) General Certification is continuous from the date of issuance, so long as the certified officer remains employed as a correctional officer or probation/parole officer in good standing with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice, and the certification has not been suspended or revoked pursuant to Rule .0503 of this Subchapter.

(c) Unless due to disciplinary action, Certified certified officers who, ~~through promotional opportunities,~~ move into non-certified positions within the Department, may have their certification reinstated without re-completion of the basic training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413, and are exempted from reverification of employment standards of 12 NCAC 09G .0202 through .0206 when returning to a position requiring certification if they have maintained employment within the Department.

(d) Documentation of General Certification shall be maintained with the officer's personnel records with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice and the Commission.

(e) Upon transfer of a certified officer from one type of corrections officer position to another, the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice shall submit a Notice of Transfer to the Standards Division.

(1) Upon receipt of the Notice of Transfer, the Standards Division shall cancel the officer's current General Certification and upon receipt of documentary evidence that the officer has met the requisite standards for the specified type of corrections officer certification, the Commission shall issue Probationary Certification reflecting the officer's new corrections position.

(2) The Commission shall grant an officer General Certification as the new type of corrections officer when evidence is received by the Standards Division that an officer has completed the training requirements of 12 NCAC 09G .0410, .0411, .0412, or .0413 within the officer's probationary period and the officer has met all other requirements for General Certification.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. January 1, 2015; August 1, 2004, 2004; October 1, 2018;

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09G .0504

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In (b)(1), line 9, what do you mean by "prescribed" Where?

On line 9, define "relevant" and "applicable" In addition, what is the difference between the two?

In (b)(4)(B), line 24, please properly refer to the citation how you published it in the Register, "12 NCAC 09G .0206;"

In (b)(6), line 28, (b)(7), line 30, (b)(8), line 33, define "knowingly" Will this be determined by the Commission? And I note that this term is not used in Rule 09G .0505(b)(6). Do you need to retain it here?

On lines 30 and 33, what is "willfully"? And I note that this term is not used in Rule 09G .0505(b)(6). Do you need to retain it here?

In (b)(11), lines 5-6, what is this Guide? What are the contents? Does this need to be incorporated by reference using G.S. 150B-21.6?

In (b)(12), line 9, what do you mean by "Commission's satisfaction"?

In (b)(13), line 13, insert a comma after "state"

On line 14, who determines if it is the "same or similar"?

On line 15, delete "aforementioned"

On line 15, replace "such" with "the"

In the History Note, line 24, this is not the proper way to insert the amended effective date. Put the newest date first.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

12 NCAC 09G .0504 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

12 NCAC 09G .0504 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a correctional officer or probation/parole officer when the Commission finds that the officer has committed or been convicted of a felony offense.

(b) The Commission may, based on the evidence for each case, suspend, revoke, or deny the certification of a corrections officer when the Commission finds that the applicant for certification or the certified officer:

- (1) has not enrolled in and completed with passing scores the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- (2) fails to meet or maintain one or more of the employment standards required by 12 NCAC 09G .0200 for the category of the officer's certification or fails to meet or maintain one or more of the training standards required by 12 NCAC 09G .0400 for the category of the officer's certification;
- (3) has committed or been convicted of a misdemeanor as defined in 12 NCAC 09G .0102 after certification;
- (4) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice for:
 - (A) commission or conviction of a motor vehicle offense requiring the revocation of the officer's drivers license; or
 - (B) ~~commission or conviction of any other offense involving moral character, as defined in: re Willis, 299 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (9175); in re 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); lack of good moral character as defined in subchapter 09G .0206~~
- (5) has been discharged by the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice because the officer lacks the mental or physical capabilities to fulfill the responsibilities of a corrections officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, obtained or attempted to obtain credit, training, or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, fraud, misrepresentation, or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training, or certification from the Commission;
- (9) has failed to notify the Standards Division of all criminal charges or convictions as required by 12 NCAC 09G .0302;

- 1 (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S.
2 128-16 or has been removed from office by sentence of the court in accord with the provisions of
3 G.S. 14-230;
- 4 (11) has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206; or has refused
5 to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening
6 Implementation Guide as required by the Department of Public Safety, Division of Adult Correction
7 and Juvenile Justice;
- 8 (12) has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC
9 09G .0206(3), where the positive result cannot be explained to the Commission's satisfaction; or
- 10 (13) has been denied certification or had such certification suspended or revoked by a previous action of
11 the North Carolina Criminal Justice Education and Training Standards Commission, the North
12 Carolina Company Police Program, the North Carolina Campus Police Program, the North Carolina
13 Sheriffs' Education and Training Standards Commission, or a similar North Carolina, out of state or
14 federal approving, certifying, or licensing agency whose function is the same or similar to the
15 aforementioned agencies if such certification was denied, suspended, or revoked based on grounds
16 that would constitute a violation of this Subchapter.
- 17 (c) Following suspension, revocation, or denial of the person's certification, the person shall not remain employed or
18 appointed as a corrections officer and the person shall not exercise any authority of a corrections officer during a
19 period for which the person's certification is suspended, revoked, or denied.

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

22 *Temporary Adoption Eff. January 1, 2001;*

23 *Eff. August 1, 2002;*

24 *Amended Eff. January 1, 2015; April 1, 2009; December 1, 2004; August 1, 2004, 2004; October*
25 *1, 2018;*

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09G .0505

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

In (a)(1), line 6, delete the "or" at the end of the line.

Also in (a)(1), what part of Rule .0504 specifically refers to a felony?

In (a)(2), line 7, please hyphenate "three-year"

In (a)(3), line 10, do you mean a Section or the entire Subchapter of 09G? And what are these grounds?

In (b) and (c), I take it the determination of the length of the sanction will be made by the Commission on a case-by-case basis?

In (b)(4), line 21, what is "Commission's satisfaction"?

In (b)(5), line 22, what is "material"?

In (b)(9), what authority are you relying upon to impose this reciprocal discipline?

In (c)(1), line 34, delete the "or" at the end of the line.

In the History Note, Page 2, line 5, this is not the proper way to insert the amended effective date. Put the newest date first.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

12 NCAC 09G .0505 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

12 NCAC 09G .0505 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

(a) When the Commission revokes or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of the sanction shall be 10 years where the cause of sanction is:

- (1) commission or conviction of a felony offense; or
- (2) the second suspension of an officer's certification for any of the causes requiring a three year period of suspension; or
- (3) revocation or denial of certification by the North Carolina Sheriffs' Education and Training Standards Commission based on grounds that would constitute a violation of Section 09G of these Rules.

(b) When the Commission suspends or denies the certification of a corrections officer pursuant to 12 NCAC 09G .0504 of this Section, the period of sanction shall be not less than three years; however, the Commission may either reduce or suspend the period of sanction under Paragraph (c) of this Rule or substitute a period of probation in lieu of suspension of certification following an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a misdemeanor as defined in 12 NCAC 09G .0102;
- (2) discharge by the North Carolina Department of ~~Correction~~ Public Safety, Division of Adult Correction and Juvenile Justice pursuant to 12 NCAC 09G .0504(b)(4) and (b)(5) of this Section;
- (3) refusal to submit to the applicant drug screen required by the Rules in this Subchapter;
- (4) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09G .0206(3), where the positive result cannot be explained to the Commission's satisfaction;
- (5) material misrepresentation of any information required for certification or accreditation;
- (6) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person attempt to obtain credit, training or certification by any means of false pretense, deception, defraudation, misrepresentation or cheating;
- (7) failure to make either of the notifications as required by 12 NCAC 09G .0302;
- (8) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230; or
- (9) certification revoked or denied by the North Carolina Sheriffs' Education and Training Standards Commission, if such certification was revoked or denied based on grounds that would constitute a violation of Section 09G of these Rules.

(c) When the Commission suspends or denies the certification of a corrections officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements; or
- (2) failure to meet or maintain the minimum standards for certification; or
- (3) discharge from the North Carolina Department of Correction for impairment of physical or mental capabilities.

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History Note: Authority G.S. 17C-6; 17C-10;
Temporary Adoption Eff. January 1, 2001;
Eff. August 1, 2002;
Amended Eff. December 1, ~~2004.~~ 2004; October 1, 2018

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Education Training Standards Commission

RULE CITATION: 12 NCAC 09G .0701

DEADLINE FOR RECEIPT: Tuesday, September 11, 2018

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:

Throughout this Rule, the agency appears to be attempting to comply with G.S. 150B-2(8a)(d), which states:

(8a) "Rule" means any agency regulation, standard, or statement of general applicability that implements or interprets an enactment of the General Assembly or Congress or a regulation adopted by a federal agency or that describes the procedure or practice requirements of an agency. The term includes the establishment of a fee and the amendment or repeal of a prior rule. The term does not include the following:

d. A form, the contents or substantive requirements of which are prescribed by rule or statute.

It appears you are attempting to address some of the substantive requirements of each form. However, you do not seem to list everything that is required for each form. You need to do so in this Rule.

Where are these forms found? How does DPS get a copy of them? Please state this in the Rule.

In (a), line 10, delete "seeks to facilitate the applicant's medical examination by listing" with "requires" or "lists"

On line 11, what is "pertinent"?

In (b), what are the contents of this form?

In (c), lines 15-17, do you need to explain the purpose of the form? Please note this question elsewhere where you list the purpose of the form, followed by the requirements of the form.

In (e), line 24, remove the comma after "officers"

On line 25, replace "indicating" with "stating"

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

On line 26, what do you mean by “at a minimum”? In this Rule, please state what is required by this form.

In (f), what are the contents?

In (g), line 32, delete the comma after “officer” both places

On line 33, define “properly”

On line 33, completed by whom?

On lines 33-34, what is this Action Form?

In (h), line 36, what do you mean by “seeks”?

On Page 2, line 1, what are the “personal and professional background”?

What is required for this documentation?

What do you mean by “specific”?

In (i), what if the Director would not recommend the instructor receive the certification? There doesn’t seem to be an option for denying this.

On line 6, what do you mean by “certifies”? Is this sworn or notarized?

In the History Note, line 15, this is not the proper way to insert the amended effective date. Put the newest date first.

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

Amanda J. Reeder
Commission Counsel
Date submitted to agency: August 27, 2018

12 NCAC 09G .0701 is amended with changes as published in 32: 24 NCR 2644-2661 as follows:

SECTION .0700 - FORMS

12 NCAC 09G .0701 REPORT: APPLICATION: AND CERTIFICATION FORMS

The following are Commission approved forms to be used by the North Carolina Department of ~~Correction~~ Public Safety, Division of Adult Correction and Juvenile Justice in making reports, applications, or requests for certification to the Commission:

- (a) The Medical History Statement. The Medical History Statement is a questionnaire to be completed by an applicant. The form seeks to facilitate the applicant's medical examination by listing information pertinent to the applicant's present and past physical condition, injuries, diseases, or operations.
- (b) The Medical Examination Report. The Medical Examination Report is a form provided to the examining physician to record the results of the applicant's medical examination.
- (c) The Request for School Accreditation Form. The Request for School Accreditation Form provides the means for an agency or institution to become certified to conduct corrections training and to affiliate with the Criminal Justice Education and Training System. It seeks information on the physical, financial, and staff support provided to the school by the agency or institution.
- (d) The Request for Training Course Accreditation Form. The Request for Training Course Accreditation Form is used to obtain accreditation for a school's particular offering of a corrections training course. It requests information regarding the administration of the course, the particular facilities to be used, and the proposed curriculum of the course.
- (e) The Report of Appointment/Application for Certification. The Report of Appointment/Application for Certification is used for reporting the appointment of correctional officers, and probation/parole officers, ~~and probation/parole officers surveillance~~ and indicating the applicant's progress toward completing the requirements for certification. The questions, at a minimum, seek information regarding the applicant's work, residential, military history, arrest history, and references.
- (f) Notice of Transfer. The Notice of Transfer form is used to notify the Standards Division of an officer's change in the type of corrections officer certification.
- (g) Report of Separation. The North Carolina Department of ~~Correction~~ Public Safety, Division of Adult Correction and Juvenile Justice, when separating a person from employment as a correctional officer, or probation/parole officer, ~~or probation/parole officer surveillance~~, shall forward to the Commission a properly completed Report of Separation or Department of Public Safety Personnel Action Form within 30 days of separation.
- (h) The Request for Instructional Certification Form. The Request for Instructional Certification Form is used by persons seeking certification as general instructors. It seeks information regarding

1 personal and professional background as well as documentation of the specific criteria for
2 certification.

3 (i) The Recommendation for General Instructor Certification Form. The Recommendation for General
4 Instructor Certification Form is completed by a School Director or agency head after an instructor
5 has finished the required probationary period. In the form the official recommends that the
6 instructor receive General Instructor Certification and certifies that the official has observed and
7 evaluated the instructor to be a teaching professional.

8 (j) The Application for Award of State Corrections Certificate. The Application For Award of State
9 Corrections Certificate requests information regarding the education, training, and experience
10 qualifying the applicant for various levels of certification under the State Corrections Officers'
11 Professional Certificate Program.

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13 *History Note:* *Authority 17C-6;*
14 *Temporary Adoption Eff. January 1, 2001;*
15 *Eff. August 1, ~~2002~~, 2002; October 1, 2018*
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