



# TEMPORARY RULE-MAKING FINDINGS OF NEED

[Authority G.S. 150B-21.1]

OAH USE ONLY

VOLUME:

ISSUE:

**1. Rule-Making Agency:**

North Carolina Sheriffs' Education and Training Standards Commission

**2. Rule citation & name:**

12 NCAC 10B .0301 Minimum Standards for 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: 10/26/2021
- b. Proposed Temporary Rule published on the OAH website: 11/2/2021
- c. Public Hearing date: 11/10/2021
- d. Comment Period: 11/3/2021 - 11/29/2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/26/2021
- f. Adoption by agency on: 12/10/2021
- 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]: 1/1/2022
- 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, NCGS 17E-7(c)  
Effective date: 1/1/2022
- ☐ 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:**

Session Law 2021-138, Senate Bill 300, NCGS 17E-7(C) is amended to require the administration of a psychological screening examination prior to the justice officer's initial certification or prior to the justice officer performing any action requiring certification by the Commission. This change becomes effective 1/1/2022.

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

Session Law 2021-138, Senate Bill 300, NCGS 17E-7(c) is amended to require the administration of a psychological screening prior to the justice officer's initial certification or prior to the justice officer performing any action requiring certification by the Commission. This change becomes effective 1/1/2022.

**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:**

**Phone:**

919-662-4375

**E-Mail:**

dkonopka@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: Alan Cloninger

Title: Chair, Sheriffs' Education & Training Standards Commission

E-Mail: acloninger@gcps.org

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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**TEMPORARY RULE**  
**REQUEST FOR TECHNICAL CHANGE**

AGENCY: Sheriff's Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0301

**DEADLINE FOR RECEIPT:**

**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 the Temporary Rule-Making Findings of Need Form:*

*In box 3, please check the box indicating that this is an amendment.*

*In box 4, please check the box indicating that this was not an emergency rule.*

*In box 5(b), the date the Rule was published on the OAH website was 11/1/21, please correct.*

*In box 9, please state the Rule-making Coordinator's name.*

*In the Rule:*

*For the entire amendment, please format in accordance with 26 NCAC 02 .0108.*

*What is the psychologist screening for? G.S. 17E-7, as amended, states that the screening is to "determine the justice officer's psychological suitability to properly fulfill the responsibilities of the justice officer." I'd suggest either adding similar language here or cross-referencing the statute. I.e. "have been administered a psychological screening examination as described by G.S. 17E-7, including a face-to-face..."*

*In general, I have questions about how necessary this Rule is, given that it tracks the language of G.S. 17E-7, as amended, almost verbatim. Please consider whether adding a cross-reference to the statute in (6), lines 11-12, would allow you to preserve the meaning of this temporary Rule, but delete some of the language in (A) and (B) which comes directly from the statute.*

*In (a)(6)(A), line 13, when you say "the face-to-face may be virtual..." do you mean to say that the "interview" may be virtual?*

Brian Liebman  
Commission Counsel  
Date submitted to agency: December 13, 2021

*In (a)(6)(A), line 14, what is a “professional clinical evaluation,” and who determines whether the audio and video are sufficient? Similarly, what is a “clinical environment” and who determines whether the audio and video are sufficient?*

*In (7)(A), line 26, the link to “<http://workplace.samhsa.gov/>” is not working.*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: December 13, 2021

1 12 NCAC 10B .0301 is proposed for amendment under temporary rules procedures as follows:

2  
3 **12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS**

4 (a) Every Justice Officer employed or certified in North Carolina shall:

- 5 (1) be a citizen of the United States;
- 6 (2) be 21 years of age for all deputies and detention officers and be at least 18 years of age for all  
7 telecommunicators;
- 8 (3) be a high school graduate, or the equivalent (GED);
- 9 (4) have been fingerprinted by the employing agency;
- 10 (5) have had a medical examination as required by 12 NCAC 10B .0304;
- 11 (6) have been administered a psychological screening examination, including a face-to-face, in-person  
12 interview conducted by a licensed psychologist.

13 (A) If a face-to-face, in-person interview is not practicable, the face-to-face may be virtual as  
14 long as both the audio and video allow for a professional clinical evaluation in a clinical environment.

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

17 (C) The psychological screening shall be valid for a period of one year prior to the justice's  
18 officer's initial appointment and applies to any justice officer seeking initial or probationary certification  
19 effective January 1, 2022 or later.

20 ~~(6)~~ (7) have produced a negative result on a drug screen administered according to the following  
21 specifications:

- 22 (A) the drug screen shall be a urine test consisting of an initial screening test using an  
23 immunoassay method and a confirmatory test on an initial positive result using a gas  
24 chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests as  
25 may be authorized or mandated by the Department of Health and Human Services for  
26 Federal Workplace Drug Testing Programs [<http://workplace.samhsa.gov/>];
- 27 (B) a chain of custody shall be maintained on the specimen from collection to the eventual  
28 discarding of the specimen;
- 29 (C) the drugs whose use shall be tested for shall include cannabis, cocaine, phencyclidine  
30 (PCP), opiates, and amphetamines or their metabolites;
- 31 (D) the test threshold values established by the Department of Health and Human Services for  
32 Federal Workplace Drug Testing Programs are incorporated by reference, including  
33 subsequent amendments and editions. Copies of this information may be obtained from  
34 the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857  
35 [<http://www.drugabuse.gov/>] at no cost;
- 36 (E) the test results shall be dated no more than 60 days before employment or appointment,  
37 whichever is earlier;

- 1 (F) the laboratory conducting the test shall be certified for federal workplace drug testing  
2 programs, and shall adhere to applicable federal rules, regulations, and guidelines  
3 pertaining to the handling, testing, storage, and preservation of samples; and  
4 (G) each drug test laboratory report shall be reviewed by a medical review officer (MRO),  
5 who shall be a licensed physician;  
6 ~~(7)~~ (8) make the following notifications:  
7 (A) within five business days, notify the Standards Division and the appointing department  
8 head in writing of all criminal offenses with which the officer is charged. This shall  
9 include all criminal offenses except minor traffic offenses. A minor traffic offense means  
10 any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20  
11 offenses defined as either a Class A or B Misdemeanor in 12 NCAC 10B .0103(10). The  
12 initial notification required must specify the nature of the offense, the date of offense, and  
13 the arresting agency. Within five business days, notify the Standards Division of all  
14 Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are  
15 issued by a judicial official against the justice officer and that provide an opportunity for  
16 both parties to be present;  
17 (B) within 20 days of the date the case was disposed, notify the appointing department head  
18 of the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B), and  
19 Civil No Contact Orders (G.S. 50C). The department head, provided he or she has  
20 knowledge of the officer's charges, Domestic Violence Orders (G.S. 50B), and Civil No  
21 Contact Orders (G.S. 50C), shall also notify the Division within 30 days of the date the  
22 case or order was disposed of in court.  
23 (C) within 30 days of the date the case was disposed, notify the Standards Division of the  
24 adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B), and Civil  
25 No Contact Orders (G.S. 50C);  
26 (D) the required notifications of adjudication shall specify the nature of the offense, the court  
27 in which the case was handled, and the date of disposition and shall include a certified  
28 copy of the final disposition from the Clerk of Court in the county of adjudication;  
29 (E) receipt by the Standards Division of timely notification of the initial offenses charged and  
30 of adjudication of those offenses, from either the officer or the department head, shall be  
31 sufficient notice for compliance with this Subparagraph;  
32 ~~(8)~~ (9) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal  
33 dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg,  
34 325 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635  
35 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308  
36 S.E.2d 647 (1983); and later court decisions that cite these cases as authority;





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**1. Rule-Making Agency:**

North Carolina Sheriffs' Education and Training Standards Commission

**2. Rule citation & name:**

12 NCAC 10B .0704 Responsibilities: School Directors, Detention Officer Certification Course

**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: 10/14/2021
- b. Proposed Temporary Rule published on the OAH website: 10/18/2021
- c. Public Hearing date: 10/26/2021
- d. Comment Period: 10/26/2021 - 11/17/2021
- e. Notice pursuant to G.S. 150B-21.1(a3)(2): 10/14/2021
- f. Adoption by agency on: 12/10/2021
- 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]: 12/29/2021
- 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:  
Effective date:
- ☐ 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:**

The various strains of the COVID virus have prolonged the pandemic beyond previous expectations, making necessary a change to this rule.

Detention Officers seeking certification with the Sheriffs' Commission must comply with the basic training requirements set forth in 12 NCAC 10B .0704. This rule requires that the 174 hour basic Detention Officer Certification Course (DOCC) must be taught in consecutive weeks; however, an outbreak of COVID-19 or any of its variants may require a suspension of training to help to ensure the safety and well-being of students and staff in these classes. The requirement to "re-start" a course in such cases places an additional burden on already understaffed county detention centers by prolonging the period of time these officers are in training and not actively working - posing an additional threat to staff, inmates and the public.

Governor Cooper has issued three separate Executive Orders (EO) that allow basic detention and law enforcement training classes to continue under these circumstances, the most recent being EO 240 that is set to expire on 2/28/2022.

Due to the uncertainty of the pandemic, as well as any other lawfully declared State of Emergency; and to ensure continuity of this required basic Detention Officer Certification Training, the Sheriffs' Commission is seeking a Temporary Rule change to 12 NCAC 10 .0704



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

Detention Officers seeking certification through the Sheriffs' Commission must comply with basic training requirements set forth by the Commission. 12 NCAC 10B .0704 requires that the basic Detention Officer Certification Course (DOCC) must be taught in consecutive weeks; however, an outbreak of COVID-19 or any of its variants pose a threat to the safety, health and well-being of students and staff in these classes. In response to the most recent rise in COVID cases, Governor Cooper signed Executive Order 228 on August 27, 2021. This Order waives the requirement for BLET and DOCC training to occur in consecutive weeks. However, this Order is due to expire on or about October 26th. A subsequent Executive Order was signed on November 30, 2021 and is set to expire 2/28/2022. Due to the uncertainty of the pandemic and/or any other lawfully declared State of Emergency, the Sheriffs' Commission is seeking a Temporary Rule change to 12NCAC 10B .0704.

**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:**

**Phone:**

919-662-4375

**E-Mail:**

dkonopka@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: Alan Cloninger

Title: Chair, NCSETs Commission

E-Mail: acloninger@

**RULES REVIEW COMMISSION USE ONLY**

Action taken:

Submitted for RRC Review:

☐ Date returned to agency:

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1 **12 NCAC 10B .0704 is proposed for amendment under temporary procedures as follows:**

2  
3 **12 NCAC 10B .0704 RESPONSIBILITIES: SCHOOL DIRECTORS, DETENTION OFFICER**  
4 **COURSE**

5 (a) In planning, developing, coordinating, and delivering each commission-certified Detention Officer Certification  
6 Course, the school director shall:

7 (1) Formalize and schedule the course curriculum in accordance with the curriculum standards  
8 established by the rules in this Chapter.

9 (A) The Detention Officer Certification Course shall be presented with a minimum of 40  
10 hours of instruction each week during consecutive calendar weeks until course  
11 requirements are completed, with the exception of weeks in which there are regularly  
12 scheduled holidays.

13 (B) In the event of exceptional or emergency circumstances, the Director shall, upon written  
14 finding of justification, grant a waiver of the minimum hours requirement.

15 (C) the Director may allow additional breaks in a specific course delivery when the Director  
16 determines that doing so is necessary based on circumstances related to a lawfully  
17 declared State of Emergency.

18 (2) Select and schedule instructors who are properly certified by the Commission. The selecting and  
19 scheduling of instructors is subject to special requirements as follows:

20 (A) No single individual may be scheduled to instruct more than 35 percent of the total hours  
21 of the curriculum during any one delivery except as set forth in Part (a)(2)(B) of this  
22 Rule.

23 (B) Where the school director shows exceptional or emergency circumstances and the school  
24 director documents that an instructor is properly certified to instruct more than 35 percent  
25 of the total hours of the curriculum, the Director of the Division shall grant written  
26 approval for the expansion of the individual instructional limitation.

27 (C) The appropriate number of instructors for specific topic areas shall be scheduled as  
28 required in 12 NCAC 10B .0703.

29 (3) Provide each instructor with a commission-approved course outline and all necessary additional  
30 information concerning the instructor's duties and responsibilities.

31 (4) Review each instructor's lesson plans and other instructional materials for conformance to the  
32 rules in this Chapter and to minimize repetition and duplication of subject matter.

33 (5) Arrange for the timely availability of appropriate audiovisual aids and materials, publications,  
34 facilities and equipment for training in all topic areas as required in the "Detention Officer  
35 Certification Course Management Guide".

36 (6) Develop, adopt, reproduce, and distribute any supplemental rules, regulations, and requirements  
37 determined by the school to be necessary or appropriate for:

- 1 (A) Effective course delivery;
- 2 (B) Establishing responsibilities and obligations of agencies or departments employing
- 3 course trainees; and
- 4 (C) Regulating trainee participation and demeanor and ensuring trainee attendance and
- 5 maintaining performance records.

6 A copy of such rules, regulations and requirements shall be submitted to the Director as an attachment to the  
7 Pre-Delivery Report of Training Course Presentation, Form F-7A. A copy of such rules shall also be given to each  
8 trainee and to the sheriff of each trainee's employing agency at the time the trainee enrolls in the course.

- 9 (7) If appropriate, recommend housing and dining facilities for trainees.

- 10 (8) Not less than 30 days before commencing delivery of the course, submit to the Commission a
- 11 Pre-Delivery Report of Training Course Presentation (Form F-7A) along with the following
- 12 attachments:

- 13 (A) A comprehensive course schedule showing arrangement of topical presentations and
- 14 proposed instructional assignments;

- 15 (B) A copy of any rules, regulations, and requirements for the school and, when appropriate,
- 16 completed applications for certification of instructors. The Director shall review the
- 17 submitted Pre-Delivery Report together with all attachments to ensure that the school is
- 18 in compliance with all commission rules; if school's rules are found to be in violation, the
- 19 Director shall notify the school director of deficiency, and approval shall be withheld
- 20 until all matters are in compliance with the Commissions' rules.

- 21 (9) Administer the course delivery in accordance with the rules in this Chapter and ensure that the
- 22 training offered is as effective as possible.

- 23 (10) Monitor or designate a certified instructor to monitor the presentations of all probationary
- 24 instructors during course delivery and prepare written evaluations on their performance and
- 25 suitability for subsequent instructional assignments. A person holding General Instructor
- 26 Certification under the Criminal Justice Education and Training Standards Commission may
- 27 evaluate instructors teaching any lecture portion of the course. However, if a Limited Lecturer is
- 28 evaluated during the practical portion of a block of instruction, he/she must be evaluated by either
- 29 the School Director or another instructor holding the equivalent type of certification. These
- 30 evaluations shall be prepared on commission forms and forwarded to the Division at the
- 31 conclusion of each delivery. Based on this evaluation the school director shall recommend
- 32 approval or denial of requests for Detention Officer Instructor Certification, Limited Lecturer
- 33 Certification or Professional Lecturer Certification. The observations shall be of sufficient
- 34 duration to ensure the instructor is using the Instructional System Development model, as taught in
- 35 Criminal Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is
- 36 objective based, documented by and consistent with a Commission-approved lesson plan. For each
- 37 topic area, the school director's or designee's evaluation shall be based on the course delivery

1 observations, the instructor's use of the approved lesson plan, and the results of the students  
2 evaluations of the instructor.

- 3 (11) Monitor or designate a certified instructor to monitor the presentations of all other instructors  
4 during course delivery and prepare written evaluations on their performance and suitability for  
5 subsequent instructional assignments. A person holding General Instructor Certification under the  
6 Criminal Justice Education and Training Standards Commission may evaluate instructors teaching  
7 any lecture portion of the course. However, if a Limited Lecturer is evaluated during the practical  
8 portion of a block of instruction, he/she must be evaluated by either the School Director or another  
9 instructor holding the equivalent type of certification. Instructor evaluations shall be prepared on  
10 commission forms in accordance with the rules in this Chapter. These evaluations shall be kept on  
11 file by the school for a period of three years and shall be made available for inspection by a  
12 representative of the Commission upon request. The observations shall be of sufficient duration to  
13 ensure the instructor is using the Instructional System Development model, as taught in Criminal  
14 Justice Instructor Training set out in 12 NCAC 09B .0209, and that the delivery is objective based,  
15 documented by and consistent with a Commission-approved lesson plan. For each topic area, the  
16 school director's or designee's evaluation shall be based on the course delivery observations, the  
17 instructor's use of the approved lesson plan, and the results of the students evaluations of the  
18 instructor.

- 19 (12) Ensure that any designated certified instructor who is evaluating the instructional presentation of  
20 another holds certification in the same instructional topic area as that being taught.

- 21 (13) Administer or designate a person to administer appropriate tests as determined necessary at  
22 various intervals during course delivery.

- 23 (14) Maintain direct supervision, direction, and control over the performance of all persons to whom  
24 any portion of the planning, development, presentation, or administration of a course has been  
25 delegated.

- 26 (15) During a delivery of the Detention Officer Certification Course, make available to authorized  
27 representatives of the Commission three hours of scheduled class time and classroom facilities for  
28 the administration of a written examination to those trainees who have satisfactorily completed all  
29 course work.

- 30 (16) Not more than ten days after receiving from the Commission's representative the Report of  
31 Examination Scores, submit to the Commission a Post-Delivery Report of Training Course  
32 Presentation (Form 7-B).

33 (b) In addition to the requirements in 12 NCAC 10B .0704(a), the school director shall be readily available to  
34 students and Division staff at all times during course delivery by telephone, pager, or other means. The means, and  
35 applicable numbers, shall be filed with the commission-certified training delivery site and the Division prior to the  
36 beginning of a scheduled course delivery.

1    *History Note:*    *Authority G.S. 17E-4;*  
2                        *Eff. January 1, 1989;*  
3                        *Amended Eff. January 1, 2009; January 1, 2006; January 1, 2005; August 1, 1998; January 1,*  
4                        *1996; January 1, 1994; January 1, 1992;*  
5                        *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
6                        *2018.*  
7  
8  
9