



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

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1711 New Hope Church Rd  
Raleigh, NC 27609-6285

September 15, 2016

Trevor Allen  
Criminal Justice Education and Training Standards Commission  
**Sent via electronic mail to TJAllen@ncdoj.gov**

Re: Objection to Rule 12 NCAC 09B .0203

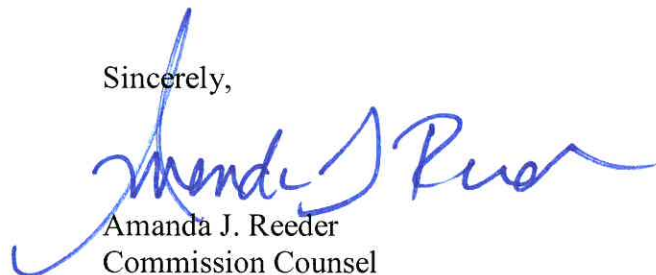
Dear Mr. Allen:

At its meeting this morning, the Rules Review Commission objected to the above-referenced rule in accordance with G.S. 150B-21.10.

The Commission objected to the Rule because the agency failed to comply with the Administrative Procedure Act, as it adopted the Rule before the close of the comment period.

Please respond to this letter in accordance with the provisions of G.S. 150B-21.12. If you have any questions regarding the Commission's actions, please let me know.

Sincerely,



Amanda J. Reeder  
Commission Counsel

cc: Charminique Branson, Rulemaking Coordinator

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919/431-3000  
fax: 919/431-3100

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## RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0203

RECOMMENDED ACTION:

- Approve, but note staff's comment
- Object, based on:
  - Lack of statutory authority
  - Unclear or ambiguous
  - Unnecessary
- Failure to comply with the APA
- Extend the period of review

COMMENT:

*The Commission published this Rule in the June 1, 2016 Register. A 60-day comment period would've ended on August 1, 2016. However, the Commission filed a Notice of Text stating the comment period would end August 15, 2016. G.S. 150B-21.2(f) states that an agency must accept comments for a period of at least 60 days; however, the agency is allowed to lengthen the comment period. The agency did so here, and submitted notice of a 75-day comment period. As such, the North Carolina Register, following the notice submitted by the agency, stated the comment period would end August 15, 2016.*

*The Commission adopted the Rule at its August 12, 2016 meeting. Therefore, the Rule was adopted before the close of the comment period set by the Commission and published in the NC Register. G.S. 150B-21.2(g) states, "An agency shall not adopt a rule until the time for commenting on the proposed text of the rule has elapsed[.]"*

*Staff recommends the Commission object to the Rule, as it was not adopted in compliance with the Administrative Procedure Act because it was adopted by the agency prior to the close of the comment period.*

Amanda J. Reeder  
Commission Counsel  
Issued August 28, 2016

REQUEST FOR TECHNICAL CHANGE

AGENCY: Criminal Justice Training and Standards Commission

RULE CITATION: 12 NCAC 09B .0203

**DEADLINE FOR RECEIPT: Friday, September 9, 2016**

***NOTE WELL: This request when viewed on computer extends 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 this office to inquire concerning the staff recommendation.

In reviewing these rules, the staff determined that the following technical changes need to be made:

*On the Submission for Permanent Rule form, Box 6, you state that the agency adopted the Rule on August 12, 2016. However, the comment period did not end until August 15, 2016. I am assuming this is a typographical error, so please submit a revised form with the correct date.*

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 25, 2016

1 **12 NCAC 09B .0203 is amended as published in Vol. 30, Issue 23, pages. 2440-2442:**

2  
3 **12 NCAC 09B .0203       ADMISSION OF TRAINEES**

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

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

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

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

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

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

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

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

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

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

- 1 (g) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training  
2 Course unless the individual is a high school, college, or university graduate or has received a high school  
3 equivalency credential recognized by the issuing state. High school diplomas earned through correspondence  
4 enrollment are not recognized toward the educational requirements.
- 5 (h) The school shall not admit any individual trainee in a presentation of the Basic Law Enforcement Training  
6 Course unless the individual has provided the School Director a certified criminal record check for local and state  
7 records for the time period since the trainee has become an adult and from all locations where the trainee has resided  
8 since becoming an adult. An Administrative Office of the Courts criminal record check or a comparable out-of-state  
9 criminal record check shall satisfy this requirement.
- 10 (i) The school shall not admit any individual as a trainee in a presentation of the Basic Law Enforcement Training  
11 Course who has been convicted of the following:
- 12 (1) a felony;
  - 13 (2) a crime for which the punishment could have been imprisonment for more than two years;
  - 14 (3) a crime or unlawful act defined as a Class B Misdemeanor within the five year period prior to the  
15 date of application for employment, unless the individual intends to seek certification through the  
16 North Carolina Sheriffs' Education and Training Standards Commission;
  - 17 (4) four or more crimes or unlawful acts defined as Class B Misdemeanors, regardless of the date of  
18 conviction;
  - 19 (5) four or more crimes or unlawful acts defined as Class ~~B~~ A Misdemeanors, except the trainee may  
20 be enrolled if the last conviction date occurred more than two years prior to the date of enrollment;
  - 21 (6) a combination of four or more Class A Misdemeanors or Class B Misdemeanors regardless of the  
22 date of conviction, unless the individual intends to seek certification through the North Carolina  
23 Criminal Justice Education and Training Standards Commission.
- 24 (j) Individuals charged with crimes specified in Paragraph (i) of this Rule may be admitted into the Basic Law  
25 Enforcement Training Course if such offenses were dismissed or the person was found not guilty, but completion of  
26 the Basic Law Enforcement Training Course does not ensure that certification as a law enforcement officer or justice  
27 officer through the North Carolina Criminal Justice Education and Training Standards Commission will be issued.  
28 Every individual who is admitted as a trainee in a presentation of the Basic Law Enforcement Training Course shall  
29 notify the School Director of all criminal offenses the trainee is arrested for or charged with, pleads no contest to,  
30 pleads guilty to, or is found guilty of, and of all Domestic Violence Orders (G.S. 50B) that are issued by a judicial  
31 official after a hearing that provides an opportunity for both parties to be present. This includes all criminal offenses  
32 except minor traffic offenses and includes any offense of Driving Under the Influence (DUI) or Driving While  
33 Impaired (DWI). A "minor traffic offense" is defined, for the purposes of this Paragraph, as an offense where the  
34 maximum punishment allowable by law is 60 days or fewer. Other offenses under G.S. 20 (Motor Vehicles) or  
35 similar laws of other jurisdictions that shall be reported to the School Director are G.S 20-138.1 (driving while under  
36 the influence), G.S. 20-28 (driving while license permanently revoked or permanently suspended), G.S. 20-30(5)  
37 (fictitious name or address in application for license or learner's permit), G.S. 20-37.8 (fraudulent use of a fictitious

1 name for a special identification card), G.S. 20-102.1 (false report of theft or conversion of a motor vehicle), G.S.  
2 20-111(5) (fictitious name or address in application for registration), G.S. 20-130.1 (unlawful use of red or blue  
3 lights), G.S. 20-137.2 (operation of vehicles resembling law enforcement vehicles), G.S. 20-141.3 (unlawful racing  
4 on streets and highways), G.S. 20-141.5 (speeding to elude arrest), and G.S. 20-166 (duty to stop in event of  
5 accident). The notifications required under this Paragraph shall be in writing and specify the nature of the offense,  
6 the court in which the case was handled, the date of the arrest or criminal charge, the date of issuance of the  
7 Domestic Violence Order (G.S. 50B), and the final disposition and the date thereof. The notifications required  
8 under this Paragraph shall be received by the School Director within 30 days of the date the case was disposed of in  
9 court. The requirements of this Paragraph are applicable at all times during which the trainee is enrolled in a Basic  
10 Law Enforcement Training Course. The requirements of this Paragraph are in addition to the notifications required  
11 under 12 NCAC 10B .0301 and 12 NCAC 09B .0101(8).

12

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

14 Eff. January 1, 1981;

15 Amended Eff. October 1, 2016; February 1, 2016; November 1, 2015; March 1, 2015; January 1,  
16 2015; June 1, 2012; February 1, 2011; June 1, 2010; December 1, 2004; July 1, 2004; August 1,  
17 2002; August 1, 2000; January 1, 1995; March 1, 1992; July 1, 1989; January 1, 1985.

18