

## Burgos, Alexander N

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**From:** Liebman, Brian R  
**Sent:** Wednesday, August 17, 2022 2:45 PM  
**To:** Schilling, Michelle  
**Cc:** Dismukes, Leslie; Burgos, Alexander N  
**Subject:** RE: [External] 12 NCAC 09G .0205

Hi all,

This looks good to me, and I will send this on to Alex and to Dana as your final version, unless I hear an objection.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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**From:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Sent:** Tuesday, August 16, 2022 6:45 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>  
**Subject:** [External] 12 NCAC 09G .0205

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Good evening, Brian:

The changes to 12 NCAC 09G .0205 have been highlighted as instructed.

Thank you for your assistance,

Michelle



**MICHELLE SCHILLING**  
Deputy Director  
Criminal Justice Standards Division  
Office: (919) 779-8205  
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## **Burgos, Alexander N**

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**Subject:** FW: [External] Requests for Technical Changes

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Tuesday, August 16, 2022 2:37 PM

**To:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Schilling, Michelle <mschilling@ncdoj.gov>

**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] Requests for Technical Changes

Thanks Leslie. I will take a look at this and let you know where I'm going with 09B .0101 tomorrow.

Appreciate both of your hard work on this.

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

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## Burgos, Alexander N

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**Subject:** FW: [External] Requests for Technical Changes

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**From:** Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>

**Sent:** Tuesday, August 16, 2022 2:35 PM

**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>

**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** RE: [External] Requests for Technical Changes

**CAUTION:** External email. Do not click links or open attachments unless you verify. Send all suspicious email as an attachment to [Report Spam](#).

Thanks Brian, we are working on the formal response and will get that to you ASAP.

Informally, when the Commission is notified that an offense has been committed the CJ Division Staff initiates an investigation (Michelle will get you the rule number). If the investigation yields what staff believes to be probable cause that an offense has been committed it goes through a Pre-PC process, which is captured in our Bylaws. The Statutes leave to us how to handle the PC process. Once the lawyer for the Commission meets with the Director and staff in Pre-PC, and finds that it would be appropriate to send the case to the Probable Cause Committee, notice is given to the individual and it is placed on a PC calendar where that person has a chance to be heard. This is also covered in our Bylaws. After that hearing, the PC Committee makes a decision about whether or not probable cause is present. If PC is found, then the individual can either accept the sanction at that point, or file for a contested case in OAH (Michelle can get you those statutes). Once in OAH it is a matter of public record and the hearing is had before the ALJ, who renders an opinion on whether an offense has been committed. The ALJ then drafts a proposed final agency decision that is sent on to the Commission. The Commission meets and hears the cases and the ALJ's decision and then deliberates and determines whether an offense has been committed, using the definition that we sent to you previously. The FAD of the Commission is appealable to Superior Court through a Petition for Judicial Review, which is a statutory remedy. From there it can be appealed to the NCCOA, then the NCSC, then the USSC.

As you can see, there are many, many layers of considered deliberation before an ultimate decision is rendered. I have attached the Bylaws and PC policy so that you can see what we have in place in addition to the information in the code and statutes. NCGS 17C-6(9) gives us the ability to adopt these bylaws and policies.

Happy to discuss further if needed.

Thanks,  
Leslie

**NORTH CAROLINA CRIMINAL JUSTICE  
EDUCATION AND TRAINING STANDARDS COMMISSION  
PLAN OF ORGANIZATION AND BY-LAWS**

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UNDER THE AUTHORITY OF CHAPTER 17C OF THE GENERAL STATUTES OF NORTH CAROLINA, THE NORTH CAROLINA CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION, HEREINAFTER REFERRED TO AS "COMMISSION," ADOPTS A PLAN OF ORGANIZATION AND BY-LAWS AS FOLLOWS:

**PART I. COMPOSITION OF THE COMMISSION**

A. MEMBERSHIP

The Commission is composed of 34 members, 27 of whom are representative designees and 7 of whom are ex officio, as prescribed by the General Assembly. [G.S. 17C-3(a)]

B. TERM

The original members serve staggered terms of specified duration varying from one to three years, as established by the General Assembly. Thereafter, representative members shall serve a term of three years, ending on June 30<sup>th</sup> of the last year of each member's respective term. Appointments by the General Assembly shall serve two-year terms to conclude on June 30<sup>th</sup> in odd-numbered years. Notwithstanding the appointments for a term of years, each member serves at the will of the appointing authority and continues to serve until their successors are appointed and qualified. [G.S. 17C-3(b)]

C. VACANCY

Vacancies in membership of the Commission occurring for any reason shall be filled for the unexpired term by the authority making the original appointment. [G.S. 17C-3(b)]

**PART II. ORGANIZATION OF THE COMMISSION**

A. OFFICERS

1. **CHAIR**

a. Election. -- The Commission elects from among the 27 representative members a Chair. Ex officio members are not eligible for election to this office. [G.S. 17C-5(a)]

b. Term. -- The Chair holds office until the first regular meeting of the Commission held after July 1 of each year. At that time, the

- Commission shall either elect or re-elect a Chair. [G.S. 17C-5(a)]
- c. Authority and Duties. -- The Chair is the presiding officer of the Commission and, in such capacity, consistent with the will of the majority of members, has complete control of the proceedings of the Commission. The Chair shall authenticate by his signature the acts, orders, and proceedings of the Commission unless he delegates such function to another.
- (1) The Chair's authority includes, but is not restricted to:
    - (a) Recognizing speakers, setting and modifying time restrictions on presentations, questioning speakers, directing discussion, and managing the Commission's proceedings.
    - (b) The Chair shall ensure that each person participating in a proceeding is given a fair opportunity to present views, data, and comments.
  - (2) The duties of the Chair include:
    - (a) Opening the sessions at the designated time, by taking the chair and calling the members to order;
    - (b) Announcing the business before the Commission in the order in which it is to be acted upon;
    - (c) Recognizing members entitled to the floor;
    - (d) Stating and putting to vote all questions moved or arising in the course of the proceedings and announcing the result of the vote;
    - (e) Expediting the business of the Commission in every way compatible with the rights of the members of the Commission to be heard;
    - (f) Enforcing the rules of order and the observance of decorum among the members; and
    - (g) Appointing such special or select committees as the Chair deems necessary.
  - (3) The Chair will not close debate on an issue except by vote of the Commission; nor will he/she prevent the making of legitimate motions by expediting the proceedings.

## 2. VICE-CHAIR

- a. Election. -- The Commission elects from among the 27 representative members a Vice-Chair. Ex officio members are not eligible for election to this office. [G.S. 17C-5(b)]
- b. Term. -- The Vice-Chair holds office until the first regular meeting

of the Commission held after July 1 of each year. At that time, the Commission shall either elect or re-elect a Vice-Chair. [G.S. 17C-5(b)]

- c. Authority and Duties. -- The Vice-Chair of the Commission, upon and during the absence, incapacitation, or other vacancy of the chair by the duly elected chair, assumes the duties and acquires the full authority of the Chair of the Commission.

### 3. OTHER OFFICERS

At such time as the need may arise, the Commission may create such other official positions, with designated duties, as it may determine beneficial. Such positions will be filled by election of the Commission. These officers will hold office until the first regular meeting of the Commission after July 1 of each year. [G.S.17C-5(b)]

## B. COMMITTEES OF THE COMMISSION

### 1. STANDING COMMITTEES

#### a. Executive Committee

- (1) **Composition.** -- The Executive Committee consists of five members: the Chair and the Vice-Chair of the Commission, the Chairs of the Probable Cause Committee, the Planning and Standards Committee, and the Education and Training Committee. The Executive Committee is chaired by the Chair of the Commission or the Chair's designee.
- (2) **Purpose.** -- The purpose of the Executive Committee shall be to provide general guidance for the Commission and to act on its behalf in matters requiring immediate action.
- (3) **Duties.** -- The duties of the Executive Committee shall include:
  - (a) To consider matters where immediate action may be required and time does not allow for the assembly of the full Commission. In such circumstances, the Executive Committee is authorized to act on behalf of the Commission, so long as it acts in good faith and informs the full Commission of its actions within five business days. If any member of the Commission objects to such a decision made by the Executive Committee,

the member may, in writing, request that the Chair call a special meeting of the Commission to review the decision, and a special meeting shall be called by the Chair. If no special meeting is requested, the decision of the Executive Committee will stand unless changed at a future Commission meeting.

- (b) To develop a long-range agenda for the Commission;
- (c) To consider and develop an effective organizational structure for the Commission;
- (d) To make application for, and receipt of, or disbursement of, grants;
- (e) To develop and maintain an effective working relationship with the Department of Justice in the provision of staff and other support services to the Commission;
- (f) To review the By-Laws of the Commission and to recommend changes as they deem necessary;
- (g) To review proposals submitted by the standing and other committees prior to their introduction to the full Commission for the purpose of coordination and setting the agenda;
- (h) To promote awareness of the efforts and activities of the Commission;
- (i) To, when necessary, resolve any issue of absence, incapacitation, or other vacancy of any elected officer;
- (j) To promote the effective coordination among standing committees of the Commission; and
- (k) To provide for the effective interagency coordination with other commissions, organizations, or agencies affected by the Commission's activities.

b. Probable Cause Committee

- (1) **Composition.** -- The Probable Cause Committee is composed of a minimum of ten members of the Commission, appointed by the Commission Chair.
- (2) **Purpose.** -- The Probable Cause Committee shall conduct probable cause hearings into violations of Commission



rules. The Committee shall provide for the continuous liaison between the Commission and the Director of the Criminal Justice Standards Division and shall act on behalf of the Commission on rule enforcement. Action of the Probable Cause Committee shall be subject to review by the full Commission.

- (3) **Duties.** -- The duties of the Probable Cause Committee shall be:
- (a) To promote adherence to the Commission's rules and regulations with respect to standards and certification;
  - (b) To develop and maintain an effective working relationship with the Department of Justice in the provision of staff and other services to the Commission;
  - (c) To participate in the system planning process;
  - (d) To serve as the probable cause committee for the Commission in the matters of officer certification, which shall be subject to review by the full Commission only after an Administrative Hearing;
  - (e) To serve as the probable cause committee for the Commission in the matters of instructor certification, which shall be subject to review by the full Commission only after an Administrative Hearing; and
  - (f) To serve as the probable cause committee for the Commission in the matters of agency and school compliance with Commission rules, which shall be subject to review by the full Commission only after an Administrative Hearing.

c. Planning and Standards Committee

- (1) **Composition.** -- The Planning and Standards Committee is composed of a minimum of ten members of the Commission, appointed by the Commission Chair.
- (2) **Purpose.** -- The Planning and Standards Committee shall be responsible for the formation of a system plan as required by NCGS 17C-6(b)(10), and the development of proposed legislation and position statements by the Commission. The Committee shall also provide policy

administration for the development of standards for the Commission as outlined in NCGS 17C. Action of the Planning and Standards Committee shall be subject to review by the full Commission.

- (3) **Duties.** -- The duties of the Planning and Standards Committee shall be:
- (a) To develop a system plan for the promotion of a system of criminal justice education and training, to include the development of proposed legislation and resolutions for adoption by the Commission;
  - (b) To develop and maintain an effective working relationship with the Department of Justice in the provision of staff and other support services to the Commission;
  - (c) To administer policies concerning mandated entry level standards established by the Commission;
  - (d) To administer policies concerning advanced voluntary standards established by the Commission;
  - (e) To administer policies and provide advice concerning criminal justice career development programs; and
  - (f) To research and identify organizations or classifications for possible inclusion into minimum or advanced standards.

d. Education and Training Committee

- (1) **Composition.** -- The Education and Training Committee is composed of a minimum of ten members of the Commission, appointed by the Commission Chair.
- (2) **Purpose.** -- The Education and Training Committee shall be responsible for the establishment of entry level and specialized training programs for the improvement of criminal justice personnel, which result in the establishment of new and revised standards. The Committee shall provide for the continuous liaison between the Commission and the Director of the North Carolina Justice Academy and shall act on behalf of the Commission on education and training matters requiring immediate action. Action of the Education and Training

Committee shall be subject to review by the full Commission.

(3) **Duties.** -- The duties of the Education and Training Committee shall be:

(a) To promote the development, delivery, and revision of basic training programs, instructor training programs and other training programs deemed necessary and appropriate by the Commission;

(b) To develop and maintain an effective working relationship with the Department of Justice in the provision of staff and other services to the Commission;

(c) To research and evaluate curriculum and delivery methods in the field of criminal justice education and training;

(d) To conduct research into the provisions for affiliation with the criminal justice education and training system as outlined by NCGS 17C-8; and

(e) To participate in the system planning process.

e. All members of the Commission are eligible for appointment to no less than one standing committee.

## 2. **SPECIAL COMMITTEES**

a. Creation. -- The Commission may create special committees with defined authority and specific responsibilities. Members of special committees shall be appointed by the Commission Chair. Persons other than Commission members are eligible for appointment to special committees; however, the Chair and the Vice-Chair of the committee must be members of the Commission.

## 3. **COMMITTEE ORGANIZATION**

### a. Officers

(1) **Chair.** -- Upon the creation of each committee, standing or special, other than the Executive Committee, the Commission shall elect a Chair of the committee. All members of the Commission are eligible to be elected Chair. An elected Chair holds office until the first regular meeting of the Commission held after July 1 of each year.

At that time, the Commission shall either elect or re-elect a Chair for each committee.

- (2) **Vice-Chair.** -- At the initial meeting of a committee of the Commission, with the exception of the Executive Committee, the members of the committee shall elect a Vice-Chair. All members of the committee are eligible for nomination to the vice-chairmanship. A Vice-Chair holds office until the first meeting of the committee held after July 1 of each year. At that time, the committee members will either elect or re-elect a Vice-Chair for the committee.
- (3) **Other Officers.** -- A committee may create such other official positions, with designated duties, as it may determine beneficial. The officers elected by the committee to such positions hold office until the first meeting of the committee held after July 1 of each year, unless the committee sooner terminates the position.

#### 4. **TERM OF MEMBERSHIP**

Membership on a committee of the Commission is continuous and concurrent with membership on the Commission, unless terminated earlier by action of the Chair of the Commission.

#### 5. **ADVISORY GROUPS**

As needed, the Commission may create an advisory group to address a specific issue or need identified by the Commission. An advisory group shall be advisory in nature and shall not have decision-making authority. The function of an advisory group shall be to research and discuss the designated topic and report any findings or suggestions back to the Commission as needed. The membership of an advisory group is to be determined by Commission staff on the basis of subject matter knowledge, expressed interest, and willingness to serve. An advisory group shall exist until such time as its input on the designated topic is no longer necessary.

### C. **STAFF**

The Attorney General shall provide staff assistance as needed by the Commission. [G.S. 17C-7]

#### 1. **DIRECTOR OF THE CRIMINAL JUSTICE STANDARDS DIVISION**

- a. **Function.** -- The Director of the Criminal Justice Standards

Division of the North Carolina Department of Justice is designated the administrative officer of the Commission for each of the programs developed, implemented, or administered by the Commission.

b. Authority and Duties of Director. -- The Director of the Criminal Justice Standards Division is directed, authorized, and empowered to act on behalf of and in the name of the Commission:

- (1) To comprehensively administer and enforce compliance with the Commission's programs and their attendant rules, standards, and procedures, as contained within the North Carolina Administrative Code;
- (2) To authenticate, by his signature, the actions, orders, rules, and official notifications of the Commission;
- (3) To be the recording officer of the Commission and the custodian of its records, except those specifically assigned by the Commission Chair to others;
- (4) To ensure that all official acts, orders, rules, proceedings, and notifications of the Commission are properly recorded, registered, and transmitted as required by law or by the Commission, and to ensure that proper notification is given to all criminal justice agencies affected by Commission action;
- (5) Upon prior express approval of the Executive Committee, to request the initiation of judicial proceedings to enjoin an offending or non-complying criminal justice agency as provided under G.S. 17C-11;
- (6) To compile data, develop reports, identify needs and perform research relevant to the improvement of criminal justice agencies;
- (7) To develop and revise programs for consideration by the Commission;
- (8) To monitor and evaluate programs of the Commission;
- (9) To provide technical assistance to relevant agencies regarding their participation and responsibilities in Commission programs;
- (10) To divulge to authorized requesters such information from Commission files in the possession of the Director of the Criminal Justice Standards Division as is permissible under applicable laws; and

- (11) To take other actions necessary or appropriate to fulfill the duties and responsibilities assigned by the Commission. [G.S. 17C-6 and 9]

### **PART III. OPERATION OF THE COMMISSION**

#### **A. IMPLEMENTATION OF CHAPTER 17C OF GENERAL STATUTES**

In its endeavor to improve the administration of justice in North Carolina, it is the purpose of the Commission to upgrade the capabilities, competence, and proficiency of criminal justice personnel through programs, standards, and procedures involving the employment, improvement, career development, and retention of criminal justice officers. In meeting these responsibilities, the Commission utilizes the power and authority expressly delegated and granted to it by the General Assembly under Chapter 17C of the General Statutes.

1. **ADOPTION OF ON-GOING PROGRAMS, ETC.** -- The Commission recognizes, acknowledges, and adopts those decisions, rules, regulations, ordinances, and programs previously made and established by the North Carolina Criminal Justice Training and Standards Council together with those of the North Carolina Criminal Justice Education and Training Systems Council and decrees that each shall remain in full force and effect, with continued and uninterrupted administration and application, unless or until such time as specifically repealed, suspended, amended, or otherwise altered by express action of the Commission. [G.S. 17C-(6)]
2. **DEVELOP NEW PROGRAMS, ETC.** -- Upon determination by the Commission that there is need for amendment or repeal, in part or in whole, of an existing program or for the development and implementation of a new program, the Commission shall proceed with the relevant actions authorized by Chapter 17C. [G.S. 17C-6; 8; 10; 12]

#### **B. NORTH CAROLINA ADMINISTRATIVE CODE**

Each formal program of the Commission, with its accompanying standards, guidelines, and procedures, shall be developed into Rules for inclusion in the North Carolina Administrative Code.

1. **AUTHENTICATION OF RULES.** -- The Rules adopted by the Commission are authenticated by the signature of the Chair of the Commission or by the signature of the Director of the Criminal Justice Standards Division.

2. **FILING RULES.** -- The Rules, as adopted by the Commission, shall be filed pursuant to G.S. 150A by the Director of the Criminal Justice Standards Division.

C. **MEETINGS**

1. **COMMISSION MEETINGS**

- a. **Regular Meetings.** -- The Commission shall have a minimum of four regular meetings annually, as required by statute, upon official call of the Chair of the Commission. When possible, the Chair, prior to adjournment of a regular meeting, shall initiate discussion of the date and location of the next regular meeting. [G.S. 17C-5(c)]
- b. **Special Meetings.** -- A special meeting of the Commission may be called at any time by either the Chair or the Vice Chair. Furthermore, upon the written request of at least five members of the Commission directed to the Chair in writing for call of a special meeting of the Commission, the Chair shall immediately issue the call for such meeting so that it will be concluded within thirty days from the date of receipt of the fifth request. [G.S. 17C-5(c)]

2. **COMMITTEE MEETINGS**

- a. **Standing Committees.** -- Each standing committee of the Commission shall meet at least four times a year upon call of the Chair of the Commission or of its respective committee chair.
- b. **Other Committees.** -- All other committees of the Commission or subcommittees of committees to the Commission shall meet upon the call of the Chair of the Commission or the Chair of the respective committee or subcommittee.

3. **NOTICE OF MEETINGS**

- a. **Commission Meetings.** -- At the direction of the Chair of the Commission, the Director of the Criminal Justice Standards Division shall expeditiously issue an official notice of meeting to each member of the Commission at least twenty days prior to each regular and 48 hours prior to each special meeting of the Commission.
- b. **Committees and Subcommittees Meetings.** -- Unless otherwise provided, the Chair of a committee or a subcommittee shall expeditiously issue or cause to be issued an official notice of meeting to each member of that committee or subcommittee at

least ten days prior to the date of the scheduled meeting and at least 48 hours prior to any special meeting.

4. **EXTENDED MEETING**

A meeting of the Commission, committee of the Commission, or subcommittee of a committee of the Commission which continues for more than one consecutive day is considered one meeting.

5. **OPEN MEETINGS**

a. Commission. -- All regular and special meetings of the Commission are open to the public, except those meetings, or portions thereof, properly designated as Closed Sessions as authorized under G.S. 143-318.11, or those for the purposes as provided in G.S. 143-318.18.

b. Committee and Subcommittee. -- Meetings of committees or subcommittees of the Commission are open to the public, except those meetings, or portions thereof, properly designated as Closed Sessions as authorized under G.S. 143-318.11, or those for the purposes as provided in G.S. 143-318.18.

6. **QUORUM**

A quorum is that number of members required to be present for official business to be lawfully transacted during Commission, committee, and subcommittee meetings.

a. Number Necessary. -- At least one-half of the membership of the Commission, committee, or subcommittee, appointed and qualified to serve, represents a quorum. The quorum refers to the number of members present at the meeting, not the number voting.

b. Quorum Continues. -- Upon announcement from the Chair that a quorum exists, the quorum will remain in effect, even if one-half of the members do not continue to be present, unless a majority of the remaining members vote to adjourn or to recess until a quorum returns.

7. **MINUTES OF MEETINGS**

The Director of the Criminal Justice Standards Division shall develop and maintain a record of the proceedings of each meeting of the Commission. Staff to each committee or subcommittee shall record the proceedings of the committee or subcommittee as required.



**8. ORDER OF BUSINESS**

- a. General Order. -- The general order of conducting business by the Commission is as follows:
- (1) Call to Order
    - (a) Oath Administration to New Members
    - (b) Roll Call
    - (c) Declaration of Quorum
    - (d) Recognition of Visitors
  - (2) Awarding of Advanced Certificates
  - (3) Election of Chairs, when necessary.
  - (4) Reading and Approval of the Minutes of the previous meeting.
  - (5) Reports of the Standing Committees:
    - (a) Executive Committee
    - (b) Education and Training Committee
    - (c) Planning and Standards Committee
    - (d) Probable Cause Committee
  - (6) Reports of Special Committees
  - (7) Other Business
  - (8) Setting of Next Meeting Date
  - (9) Old Business
  - (10) Closing of Commission Business by Motion to Adjourn.
- b. Committee Business. -- The general order of conducting business by a committee or subcommittee of the Commission shall be set by the Chair of the committee or subcommittee.

**9. MEETING AGENDA**

The Chair shall, at each meeting, have an agenda of the order of business, including matters to be considered during the meeting. The agenda shall be made available to each member prior to or at the commencement of the meeting.

**10. CONDUCTING BUSINESS**

- a. Rules of Order. -- Meetings of the Commission, committees of the Commission, and subcommittees of committees shall be conducted according to Roberts' Rules of Order.
- b. Votes Necessary for Adoption. -- Unless otherwise expressly required, all motions or other items of business subjected to vote of the members of either the Commission, a committee to the Commission, or a subcommittee of a committee, are officially adopted or approved by a simple majority of the voting members

on each motion or other issue for determination. In the event of a tie, the motion shall not carry.

- c. Participation by Proxies at Meetings -- Certain members may designate a proxy to attend meetings of Committees and the Commission on their behalf, subject to the following limitations:
- (1) Ex officio members may designate, in writing, one member of their respective office, department, university or agency to represent and vote for them on the Commission at all meetings the ex officio member is unable to attend. The designated proxy may vote on all matters that come before the Commission or the ex officio member's assigned committee;
  - (2) In the event a designated proxy of an ex officio member is unable to attend a meeting on behalf of the ex officio member that proxy may not designate another proxy to attend on their behalf. The designation of a replacement proxy must be made, in writing, by the ex officio member; and,
  - (3) Non ex officio members may not designate a proxy to represent them at any Committee or Commission meeting except the following: the Chair of the Probable Cause Committee, the Planning and Standards Committee, and the Education and Training Committee may designate another member of their Committee as a proxy to represent and vote for them only at meetings of the Executive Committee.

# North Carolina Criminal Justice Education and Training Standards Commission

## Probable Cause Policy For Applicants and Certified Officers

Approved & Adopted by the Commission - November 16, 2007

Amended - November 21, 2008; November 20, 2009; February 24, 2012; November 22, 2013; February 21, 2014; February 12, 2016; May 12, 2016; May 19, 2017; November 30, 2018; February 15, 2019; August 13, 2021

### DEFINITIONS:

**Applicant:** Includes applicant for Law Enforcement Officer certification, Local Confinement Officer certification, Correctional Officer certification (to include Correctional Officer and Probation/Parole Officer), and Juvenile Justice Officer certification (to include Juvenile Court Counselor, Chief Court Counselor, and Juvenile Justice Officer)

**Officer:** Includes Law Enforcement Officer, Local Confinement Officer, Correctional Officer (to include Correctional Officer and Probation/Parole Officer), and Juvenile Justice Officer (to include Juvenile Court Counselor, Chief Court Counselor, and Juvenile Justice Officer)

**NOTE:** If there are specifications that relate to a certain certification, those will be noted as needed per section.

### ADMINISTRATION:

#### *A. Applicants*

- 1) The Director and Staff shall review all applications for officer certifications.
- 2) Where information in an application and related documents is insufficient for the Director and/or staff to determine whether an applicant is qualified for certification, the Director or his/her designee shall notify the appointing agency & applicant of the deficiency and request additional information be provided. The Director or his/her designee shall contact the agency and applicant and offer an opportunity to show compliance by submitting additional information or a clarifying statement concerning qualifications for certification. The agency and/or applicant shall be allowed no more than thirty (30) calendar days from the Director's request for information in which to respond. Failure to respond within the thirty (30) day period may result in an adverse determination against the applicant.
- 3) Where information in an application and related documents, including any supplemental information provided by the appointing agency, the applicant, or any other source, clearly establishes the applicant meets all minimum standards for the certification for which they are applying and is otherwise qualified, the Director, on behalf of the Commission, shall grant certification.
- 4) Where information in an application and related documents, including any supplemental information provided by the appointing agency, the applicant or any other source, clearly establishes the application should be denied, the Director, on behalf of the Commission, shall notify the applicant pursuant to section "D" of this policy.

- 5) Where information in an application and related documents does not clearly establish whether the applicant should be granted or denied certification, the cases will be handled in accordance with Paragraph "C" of this policy.

#### B. Officers

- 1) The Director, in consultation with Staff and upon information available to him/her, initially determines whether grounds may exist to revoke or suspend an officer's certification.
- 2) Where the information available to the Director is insufficient for him/her to determine whether an officer's certification must or may be revoked or suspended under the Commission's rules, the Director or his/her designee shall notify the officer's employing agency and request further information be provided. The Director or his/her designee shall also contact the officer and offer an opportunity to show compliance with all lawful requirements for retention of certification by submitting additional information or a clarifying statement concerning qualification for continuing certification. An officer shall be allowed no more than thirty (30) calendar days from the Director's request for information in which to respond. Failure to respond within the thirty (30) day period may result in an adverse determination against the officer. The Director may contact any other source for additional information concerning the officer's qualification for continued certification.
- 3) Where information available to the Director clearly establishes the certification should be revoked or suspended, the Director, on behalf of the Commission, shall notify the applicant pursuant to section "D" of this policy.
- 4) Where information available to the Director does not clearly establish whether an officer's certification should be revoked or suspended certification, the cases will be handled in accordance with Paragraph "C" of this policy.
- 5) Where information available to the Director does not clearly establish whether a lateral transfer should be allowed to transfer their certification, those cases will be handled in accordance with paragraph "C" of this policy.

#### C. Cases Delegated to Staff

- 1) Probable Cause Clearly Established

Where information in an application and related documents, any supplemental information provided by the appointing agency, the applicant/officer, or any other source, clearly establishes probable cause to believe the applicant/officer does not meet the minimum standards for the certification for which they are applying or which they currently hold pursuant to 12 NCAC 09A, 12 NCAC 09B, 12 NCAC 09C, 12 NCAC 09D, 12 NCAC 09E, 12 NCAC 09F, 12 NCAC 09H or 12 NCAC 09G, the Director or his/her designee shall evaluate the application and take action in accordance with the below policy.

Staff is directed to deny the application for officer certification or suspend or revoke the certification, whichever is appropriate, if any of the following apply:

(a) Law Enforcement Officers, Juvenile Justice Officers, Court Counselors & Local Confinement Officers

- [1] Felony conviction [12 NCAC 09A .0204 (a)];
- [2] Misdemeanor conviction which carries punishment of more than two years confinement [12 NCAC 09A .0204 (a)];
- [3] Conviction of Class B misdemeanor after certification [12 NCAC 09A .0204(b)(3)]; or within five (5) years prior to the date of application for certification [12 NCAC 09A .0204 (b)(3) & 12 NCAC 09B .0111, 12 NCAC 09B .0116, 12 NCAC 09B .0117];
- [4] Four or more convictions defined as Class B misdemeanors regardless of the date of conviction [12 NCAC 09B .0111];
- [5] Four or more convictions defined as Class A misdemeanors if the last conviction occurred less than two years prior to the date of application/appointment [12 NCAC 09B .0111];
- [6] Has failed to maintain any of the minimum employment standards required by 12 NCAC 09B .0100 for the officer's certification category;
- [7] Has been removed from office by decree of the Superior Court;
- [8] Has failed to satisfactorily complete minimum in-service training requirements as prescribed in 12 NCAC 09E;
- [9] Has refused to submit to a lateral transferee drug screen as required by Commission rules;
- [10] Has produced a positive result on a drug screen reported to the Commission [12 NCAC 09C .0310];
- [11] Has failed to satisfactorily complete the required training and pass the State Comprehensive Examination in its entirety within the 12 month probationary period [12 NCAC 09B .0403].

(b) Correctional Officers and Probation/Parole Officers

- [1] Felony conviction or completion of any corrections supervision within ten (10) years of appointment whichever is later [12 NCAC 09G .0206];
- [2] Misdemeanor conviction as defined in 12 NCAC 09G .0102 within three (3) years of appointment or the completion of any corrections supervision imposed by the courts, whichever is later;
- [3] Misdemeanor conviction as defined in 12 NCAC 09G .0102 after certification [12 NCAC 09G .0504];
- [4] Has not enrolled in and satisfactorily completed the required basic training course in its entirety within prescribed time periods relevant or applicable to a specified position or job title;
- [5] Has failed 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;

- [6] Has been removed from office by decree of the Superior Court in accordance with the provisions of NCGS 128-16 or has been removed from office by sentence of the court in accordance with the provisions of NCGS 14-230;
- [7] Has refused to submit to an applicant drug screen as required by 12 NCAC 09G .0206;
- [8] Has produced a positive result on a drug screen reported to the Commission [12 NCAC 09G .0206].

(c) Applicants for Other Certifications

Staff is directed to deny the application for certification when the applicant/officer does not meet the minimum standards for certification for any of the following:

- [1] General Instructor Certification [12 NCAC 09B .0302 & .0303]; [12 NCAC 09G .0308 & .0309];
- [2] Specialized Instructor Certification [12 NCAC 09B .0304 & .0305]; [12 NCAC 09G .0310 & .0311];  
\*This includes Subject Control Arrest Techniques, First Responder, Firearms, Law Enforcement Driver Training, Physical Fitness, Restraint, Control and Defense Techniques (DJJDP), Medical Emergencies (DJJDP), Explosive and Hazardous Materials Emergencies, Firearms (DOC) and Controls, Restraints, and Defensive Techniques (DOC);
- [3] Professional Lecturer Certification [12 NCAC 09B .0306]; [12 NCAC 09G .0316];
- [4] Radar Instructor Certification [12 NCAC 09B .0308 & .0310];
- [5] Time-Distance Instructor Certification [12 NCAC 09B .0309 & .0310];
- [6] Lidar Instructor Certification [12 NCAC 09B .0237 & 09B .0310];
- [7] Speed Measurement Instrument (SMI) Operators Certification [12 NCAC 09C .0308];
- [8] School Director Certification [12 NCAC 09B .0501 & .0502]; [12 NCAC 09G .0405 & .0406];
- [9] In-Service Training Coordinator Designation [12 NCAC 09E .0109];
- [10] Professional Certificate Program [12 NCAC 09D .0100]; [12 NCAC 09G .0600];
- [11] Concealed Handgun Instructor Certification [12 NCAC .09F .0104];
- [12] Retired & Separated Law Enforcement Officers Firearms Qualification Certification Program [12 NCAC .09H .0104].

2) Discrepancies

Discrepancies Between Report of Appointment/Application for Certification (Form F-5A), Personal History Statement (Form F-3), Mandated Background Investigation (Form F-8) and Criminal History Records

Information submitted to the Criminal Justice Standards Division will be evaluated by staff to determine whether the applicant/officer has knowingly made a material misrepresentation of any information required for certification.

**(a) Lesser Included Offense**

When an evaluation of an application for certification and certification file reveals that an applicant or officer listed a lesser included offense of a previously charged offense on the Report of Appointment/Application for Certification (Form F-5A) or Personal History Statement (Form F-3), and no other unrelated charges were omitted, the Director is given the authority to resolve this discrepancy in favor of the applicant/officer provided the applicant/officer updates the Report of Appointment/Application for Certification (Form F-5A) and/or the Personal History Statement (Form F-3).

**(b) Simultaneous Service of Multiple Charges**

When an evaluation of an application for certification and case file reveals that an applicant listed one or more of several charges, but inadvertently failed to list all charges which were served at the same time as those listed, and no other unrelated charges were omitted, the Director is given the authority to resolve this discrepancy in favor of the applicant/officer, provided the applicant/officer updates the Report of Appointment/Application for Certification (Form F-5A), Personal History Statement (Form F-3) and the Mandated Background Investigation (Form F-8). Also, provided:

- [1] the applicant/officer submits a notarized statement explaining why he/she failed to list the criminal history record on his/her Report of Appointment (Form F-5A) and/or Personal History Statement (Form F-3);
- [2] the applicant/officer updates the Report of Appointment (Form F-5A) and/or Personal History Statement (Form F-3) within fifteen (15) days of agency notification to be consistent with the criminal history record.

**(c) Discussed or Otherwise Divulged**

When an evaluation of an application for certification or review of an existing certification file reveals an applicant/officer discussed or otherwise divulged previous criminal charges to his employing agency, but omitted such charges from his/her Report of Appointment (Form F-5A) or Personal History Statement (Form F-3), the Director is given the authority to resolve this discrepancy in favor of the applicant;

When an evaluation of an application for certification or review of an existing certification file reveals an applicant/officer discussed or otherwise divulged previous criminal charges to this Commission or the

Sheriffs' Standards Commission at any time in connection with a previous application(s), and if the omission occurred on a Criminal Justice Standards Report of Appointment (Form F-5A), Personal History Statement (Form F-3), Mandated Background Investigation Form (Form F-8), or Report of Appointment/Reinstatement of Certification within Two Years After Permanent Separation (Form F-5C), the officer will be required to provide a notarized written statement addressing the reason the charge(s) were not disclosed and update the pertinent form(s) and will be required within fifteen (15) days of agency notification to be consistent with the criminal history record. The discrepancy may be resolved in favor of the applicant/officer, if no other circumstances are deemed to warrant further action, provided:

- [1] the applicant/officer submits a notarized statement explaining why he/she failed to list the criminal history record on his/her Report of Appointment (Form F-5A) and/or Personal History Statement (Form F-3);
- [2] the employing agency submits verification that the offense(s) was divulged by the applicant/officer prior to the submission of the application for certification to the Division; and
- [3] the applicant/officer updates the Report of Appointment (Form F-5A) and/or Personal History Statement (Form F-3) within fifteen (15) days of agency notification to be consistent with the criminal history record.

(d) **Material Misrepresentation involving ONE "Class A misdemeanor"**

If it is found that an officer/applicant failed to list one "Class A misdemeanor" charge or conviction on any Commission form, staff is directed to allow the officer/applicant one opportunity to correct the misrepresentation. The officer will be required to provide a notarized written statement addressing the reason the charge was not disclosed and update the pertinent form(s) and will be required within fifteen (15) days of agency notification to be consistent with the criminal history record. The discrepancy may be resolved in favor of the applicant/officer, if no other circumstances are deemed to warrant further action.

(e) **Material Misrepresentations involving four or less worthless check charges/convictions:**

If it is found that an officer/applicant failed to list up to four worthless check charges/convictions on one Commission form, staff is directed to allow the officer/applicant one opportunity to correct the misrepresentation.



(f) **Charges/Convictions Discovered During Period of Separation**

If it is found, during internal investigative processes, that an officer failed to disclose charges and/or convictions, and the officer has been separated from his/her certifying agency, no action will be taken unless there is evidence of the conviction of or commission of:

- 1) a felony;
- 2) a Class B Misdemeanor within five (5) years of separation for criminal justice officers; or
- 3) a DOC Misdemeanor within three (3) years of separation for DOC personnel; or
- 4) he/she reapplies for certification.

3) **Commission of Offense(s)**

With the exception of correctional officer applicants, any allegation of a commission of a felony or misdemeanor criminal offense will be investigated and reviewed by Division staff. If the applicant/officer was charged with a criminal offense and the criminal offense was dismissed by the district attorney or there was a finding of not guilty, a determination will be made by the Director, legal counsel and the Chair of the Probable Cause Committee as to whether or not there is sufficient evidence to support an allegation that a criminal offense was committed. If upon review there is insufficient evidence that a criminal offense has been committed or the commission of the offense does not disqualify the applicant/officer for certification then certification will be issued if the applicant/officer is otherwise eligible.

If, however, there is sufficient evidence to prove a criminal offense was committed and the commission of the offense may disqualify the applicant/officer, the allegation(s) shall be brought before the Probable Cause Committee to determine if probable cause exists to find the applicant/officer committed a criminal offense that would prohibit the applicant/officer from being certified.

4) **Effect of Expungement on Criminal History Investigations**

i. Law Enforcement Officer/Applicant, Juvenile Justice Officer/Applicant, Juvenile Court Counselor/Applicant, Chief Court Counselor/Applicant Local Confinement Officer/Applicant, and Probation/Parole Officer/Applicant:

Applicants and Certified Officers: Where an applicant for certification or an officer seeks to obtain or obtains an expungement order for criminal charges the Division staff (to include input from the Director, Deputy Director, legal counsel and the Chair of the Probable Cause Committee) shall:

- (a) Investigate the possible commission of the offense(s); and
- (b) Submit the results of the staff's investigative report to legal counsel for the Commission for a determination to be made as to whether there is some minimal evidence of criminal misconduct to warrant presentation to the Probable Cause Committee.

- (c) If sufficient evidence is found that an offense has been committed, that evidence will be presented to the Probable Cause Committee.
  - (d) If, upon review, there is not sufficient evidence found that an offense has been committed, no action will be taken.
- ii. Correctional Officer:
- (a) Applicant: With the exception of expunged felony convictions, an applicant for certification who obtains an expungement order for criminal charges prior to the receipt of the application by the Division, the Division staff shall not consider the expungement as possible grounds for denial of certification.
  - (b) Certified Officer: Where an applicant for certification or an officer seeks to obtain or obtains an expungement order for criminal charges the Division staff (to include input from the Director, Deputy Director, legal counsel and the Chair of the Probable Cause Committee) shall:
    - (i) Investigate the possible commission of the offense(s); and
    - (ii) Submit the results of the staff's investigative report to legal counsel for the Commission for a determination to be made as to whether there is some minimal evidence of criminal misconduct to warrant presentation to the Probable Cause Committee.
    - (iii) If sufficient evidence is found that an offense has been committed, that evidence will be presented to the Probable Cause Committee.
    - (iv) If, upon review, there is not sufficient evidence found that an offense has been committed, no action will be taken.

## 5) Juvenile and/or Other Restricted Records

- (a) Where an applicant for certification or a certified officer is found to have been subject to criminal proceedings as a juvenile in whatever jurisdiction located as a result of potential criminal conduct, the Division staff (to include input from the Director, Deputy Director, legal counsel and the Chair of the Probable Cause Committee) shall seek, if available, any documentation or witnesses relating to the conduct of the applicant or officer.
- (b) Where an applicant for certification or an officer is found to have been subject to criminal proceedings in whatever jurisdiction located as a result of potential criminal conduct with the result that the proceedings are sealed or otherwise restricted, Division staff (to include input from the Director, Deputy Director, legal counsel and the Chair of the Probable Cause Committee) shall seek, if available, any documentation or witnesses relating to the conduct of the applicant or officer.
- (c) If sufficient evidence is found that an offense has been committed, that evidence will be presented to the Probable Cause Committee.
- (d) If, upon review, there is not sufficient evidence found that an offense has been committed, no action will be taken.
- (e) Where an applicant for certification or an officer is found to have been subject to a juvenile petition not a criminal proceeding or if the applicant for certification or an officer is found to been charged in North Carolina

as a youthful offender and the case was not referred to Superior, Division staff shall not consider the juvenile petition or the youthful offender offense that wasn't transferred to Superior Court as possible grounds for denial, suspension, revocation of certification.

6) **Positive Drug Screen that can be explained to the Commission's satisfaction**

Any report of a positive drug screen will be investigated and reviewed by Division staff. A determination will be made by the Director, legal counsel and the Chair of the Probable Cause Committee as to whether or not there is sufficient evidence to support an allegation of a positive drug screen in accordance with the Commission's rule 12 NCAC 09A .0204(b)(13), "... has produced a positive result on a drug screen reported to the Commission as specified in 12 NCAC 09C .0310, where the positive result cannot be explained to the Commission's satisfaction." If upon review it is found that there is a satisfactory explanation for the positive drug screen for a prescription drug no sanctions will be taken against the applicant/officer's certification.

If, however, it is determined that the positive drug screen for a prescription drug cannot be explained to the satisfaction of the Commission, staff shall deny the application for officer certification or suspend the certification, whichever is appropriate.

7) **Certified Officers who report the final disposition of criminal charges to their Agency, but the officer/agency fails to notify the Commission as required.**

Any finding of failure to report a criminal charge to the Criminal Justice Standards Division will be reviewed by Division staff. If after a review of certification documentation, the officer's written statement, and investigation by staff, it is found that the certified officer had within 20 days of the final disposition reported to his agency the nature of the offense, the court in which the case was handled, the date of the arrest or criminal charge, and the date of the final disposition, the discrepancy may be resolved in favor of the applicant/officer, if no other circumstances are deemed to warrant further action.

D. **When the Director or his/her designee determines that probable cause exists to deny, suspend or revoke the certification, he/she shall send to the applicant/officer by certified mail written notification of:**

- 1) The Director's notification of probable cause on behalf of the Commission;
- 2) A brief statement of the factual basis for the probable cause finding to believe the application for certification be denied or certification itself be suspended or revoked;
- 3) The applicant's eligibility to submit a new application for certification as an officer when the deficiency in minimum standards is cured, if possible;

- 4) The applicant's/officer's right to have the Commission provide an evidentiary administrative hearing to resolve the dispute concerning the applicant's qualifications for certification or the officer's qualifications for continued certification;
- 5) The Commission's intention to call for an evidentiary administrative hearing to resolve the dispute concerning the applicant's/officer's qualifications if requested by the applicant/officer or the Commission unless the dispute otherwise can be resolved; and,
- 6) Notice that if the applicant/officer fails to submit a request for hearing to the Commission within thirty (30) calendar days of receipt of the status report, the Commission will consider the applicant's/officer's failure to do so a waiver of rights to a hearing and deny the application for certification or suspend or revoke the certification for the period of time required by Commission rules.
- 7) If the applicant/officer requests a hearing, Counsel to the Commission will represent the Commission at all subsequent administrative and judicial hearings related to the application for certification or related to the suspension/revocation of certification.

**E. Reporting Procedure for Cases not taken formally to Committee**

A report will be given at each Probable Cause Committee meeting as to the number of cases reviewed by the Division, a brief summary of each of the case, and the action taken by the staff on behalf of the Commission.

**F. All Other Cases**

The Director shall refer any case to the Probable Cause Committee where there is conflicting evidence as to whether or not one or more minimum standards has been met or there is evidence that other Commission rules have been violated. Specifically:

- 1) An allegation of commission of an offense;
- 2) Any allegation of material misrepresentation not addressed in this policy;
- 3) Where there is conflicting evidence as to whether or not one or more minimum standards have been met;
- 4) Evidence of lack of good moral character;
- 5) Any other allegations of misconduct;
- 6) Any other questions of fact or law.

The Director or his/her designee shall refer the case to the Probable Cause Committee and request the Committee to determine if probable cause exists to find the applicant/officer is not qualified for certification.

**G. Probable Cause Committee**

- 1) Probable Cause cases will be heard in closed session as allowed by G.S. 143-318.11 and G.S. 143-318.18.
- 2) If the Probable Cause Committee finds no basis to deny certification, the Committee may grant the application for certification.

- 3) If the Probable Cause Committee determines more information is needed, the Committee may request the Director to make further inquiry into the facts of the case and report the results of the inquiry at a subsequent meeting.
- 4) If the Probable Cause Committee finds basis to believe an application for certification should be denied or an officer's certification be suspended or revoked, the Director shall notify the applicant as provided in Section "D" of this policy.
- 5) If the Probable Cause Committee finds no basis to suspend or revoke an officer's certification, no probable cause will be found and the case will be closed.

#### H. Post Probable Cause Procedures

- (1) If, after presentation of evidence from the officer/applicant and division staff, probable cause is found, the applicant/officer may request a hearing within thirty (30) calendar days of receiving notification in order to resolve any dispute concerning the applicant's/officer's qualifications for certification.
- (2) If, after presentation of evidence from the officer/applicant and division staff, probable cause is found, and the applicant/officer fails to request a hearing within the thirty (30) day period, this will constitute a waiver of rights to a hearing and the applicant's/officer's certification will, thereby, be denied, suspended or revoked.
- (3) If, after presentation of evidence from the officer/applicant and division staff, probable cause is found, as soon as possible after the applicant/officer is notified of the probable cause finding, and if there are no contested material facts, Counsel to the Commission upon direction of the Probable Cause Committee may contact the applicant and attempt to obtain a Proposed Consent Order resolving all disputed issues between the parties consistent with the Commission's rules.
  - (a) If a Proposed Consent Order can be agreed upon, it will be presented to the Commission for approval and action on the application for, suspension of or revocation of certification consistent with its terms and the Commission's rules.
  - (b) If a Proposed Consent Order is not obtained and/or the applicant/officer requests a hearing prior to agreement on a Proposed Consent Order being reached, Counsel to the Commission will represent the Commission at all subsequent administrative and judicial hearings related to the application for certification or the suspension of or revocation of certification.
  - (c) If a proposed Consent Order is not obtained and the applicant/officer fails to request a hearing within the time allowed the denial of the application or the suspension of or revocation of certification will stand.

## **Burgos, Alexander N**

---

**Subject:** FW: [External] Requests for Technical Changes

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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Monday, August 15, 2022 5:49 PM  
**To:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] Requests for Technical Changes

Hi Michelle and Leslie,

Thanks for these responses. I will go rule by rule below:

**09G .0205**

Looks good, but you do need to highlight your changes, both deletions and additions. I will recommend approval of this Rule.

**09B .0101**

What is the process through which the Commission determines that an officer or applicant has “committed” an offense under this Rule? Is that process laid out in another Rule?

**09B .0103**

Thanks for making the change to (c) with respect to the citations to the G.S. With respect to (d), line 19, for the sake of clarity, I would add a reference to 09C .0303 in the text of this Rule, so your regulated public knows where to look for what it may and may not do. Given that change, I will recommend approval of this Rule.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] Requests for Technical Changes

---

**From:** Schilling, Michelle <mschilling@ncdoj.gov>

**Sent:** Friday, August 12, 2022 10:01 AM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] Requests for Technical Changes

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Thanks, Brian.

Just let me know if you have any questions.

Michelle



**MICHELLE SCHILLING**

Deputy Director

Criminal Justice Standards Division

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## Burgos, Alexander N

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**From:** Liebman, Brian R  
**Sent:** Friday, August 12, 2022 9:46 AM  
**To:** Schilling, Michelle  
**Cc:** Dismukes, Leslie; Burgos, Alexander N  
**Subject:** RE: [External] Requests for Technical Changes

Hi Michelle,

Thanks for sending these over. I will review and get back to you as soon as I can.

Brian

Brian Liebman  
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**From:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Sent:** Thursday, August 11, 2022 6:23 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>  
**Subject:** [External] Requests for Technical Changes

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Good afternoon, Brian:

The attachments are for your use.

Michelle



**MICHELLE SCHILLING**  
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RESPONSE TO REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09G .0205

Recommended Change #1: *"In (a), line 5, the way the Rule currently reads, it appears you're requiring the officer to be examined by a physician licensed in NC, or a PA or NP from another state. Is this the agency's intent?"*

Response: This was an oversight. The physician, physician's assistant or nurse practitioner, needs to be licensed in North Carolina.

Recommended Change #2: *"In (a), line 6, is the "essential job functions" a formal part of an officer's job description?"*

Response: Yes. The formal job posting for Correctional Officer positions in North Carolina identify the essential job functions that must be performed.

1 **12 NCAC 09G .0205 is amended as published in 36:17 NCR 1431 as follows**

2  
3 **12 NCAC 09G .0205 PHYSICAL AND MENTAL STANDARDS**

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

10 (b) Every person employed as a correctional officer or probation/parole officer by the North Carolina Department of  
11 Public Safety, Division of Adult Correction and Juvenile Justice shall have been administered ~~within one year prior~~  
12 ~~to employment with the North Carolina Department of Public Safety, Division of Adult Correction and Juvenile Justice~~  
13 ~~a psychological screening examination by a clinical psychologist or psychiatrist licensed to practice in North Carolina~~  
14 ~~to determine the officer's mental and emotional suitability to fulfill the officer's particular responsibilities as stated in~~  
15 ~~the essential job functions~~ a psychological screening examination in accordance with G.S. 17C-10(c). The  
16 psychological screening shall be valid for a period of one year [prior to the criminal justice officer's initial appointment  
17 and applies to any criminal justice officer seeking initial or probationary certification] from the date on which it was  
18 administered.

19  
20 *History Note: Authority G.S. 17C-6; 17C-10;*

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

22 *Eff. August 1, 2002;*

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

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

25 *Temp. Amendment Eff. February 15, 2022*

26

## Burgos, Alexander N

---

**From:** Liebman, Brian R  
**Sent:** Thursday, July 28, 2022 3:29 PM  
**To:** Dismukes, Leslie; Schilling, Michelle  
**Cc:** Burgos, Alexander N; Squires, Richard N  
**Subject:** RE: [External] RE: CJETS Request for Changes - August 2022 RRC

OK. Let me get back to you on the meeting.

Brian Liebman  
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**From:** Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>  
**Sent:** Thursday, July 28, 2022 3:26 PM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Squires, Richard N <rsquires@ncdoj.gov>  
**Subject:** RE: [External] RE: CJETS Request for Changes - August 2022 RRC

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Thanks Brian, I am adding Richard Squires who can give us the rule numbers. How about next Wednesday and we can all meet along with the person reviewing the Sheriffs' rules and Richard to discuss how to make it work?

---

**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Thursday, July 28, 2022 3:13 PM  
**To:** Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>; Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: CJETS Request for Changes - August 2022 RRC

Hi Leslie,

Unfortunately I am unavailable today for a call, and I don't think tomorrow looks good either, but I can probably do something next week. As to the Sheriff's rules, I don't have them for review, so I am unsure what another counsel might have suggested. If they need to be identical, then let me know the equivalent rules and I'll look into it. It'd probably be best to do that before we speak.

Thanks,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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---

**From:** Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>  
**Sent:** Thursday, July 28, 2022 1:30 PM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** [External] RE: CJETS Request for Changes - August 2022 RRC

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Thanks Brian, can we schedule a meeting to discuss? I have a few concerns I'd like to talk through and also want to flag for you that – per SB300 – we have had to re-write these rules to be identical to those of Sheriffs. Have you made the same changes to their rules that are moving through the process?

Let us know what works for you to meet and discuss –

Thanks,  
Leslie

---

**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Thursday, July 28, 2022 1:10 PM  
**To:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Cc:** Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** CJETS Request for Changes - August 2022 RRC

Good afternoon,

I'm the attorney who reviewed the Rules submitted by CJETS for the August 2022 RRC meeting. Note I've reviewed the 2 rules from 09B and the 1 rule from 09G that is on follow up.

The RRC will formally review these Rules at its meeting on Thursday, August 18, 2022, at 9:00 a.m. The meeting will be a hybrid of in-person and WebEx attendance, and an evite should be sent to you as we get closer to the meeting. If there are any other representatives from your agency who will want to attend virtually, let me know prior to the meeting, and we will get evites out to them as well.

Please submit the revised Rules to me via email, no later than 5 p.m. on Thursday, August 11, 2022.

In the meantime, please do not hesitate to reach out via email with any questions or concerns.

Thanks,

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: Rules Subject to Legislative Review - CJETS

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Tuesday, July 19, 2022 2:15 PM

**To:** Schilling, Michelle <mschilling@ncdoj.gov>; Dismukes, Leslie <ldismukes@ncdoj.gov>

**Cc:** Smythe, John J <jsmythe@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

Hi all,

Thanks for the phone call earlier.

Just to recap, you've got 09G .0205 and 09B .0101 under legislative review. 09G .0205 will remain on our agenda until August, when RRC will consider it. 09B .0101 along with 09B .0103, were filed with us for the August meeting, and then there are several other rules from 09B that will be coming in for the September meeting. You need a 10/1/22 effective date for all of these rules. As I told you, you can either take an extension on 09B .0101 and 09G .0103 to the September meeting, or leave these two rules on for August, but specify a later effective date of 10/1/22. Y'all stated you'd be fine just specifying a later effective date, and I told you I'd get back with you on what you needed to do.

That said, a few things:

First, we are on Legislative Day 28, not 29. So that means if the GA comes back one day a month from here on out, we're looking at September, not August, as the effective date for the two outdated versions of 09B .0101 and 09G .0205 that are under legislative review. At the very least, per the adjournment resolution, they're coming back 7/26 (legislative day 29), 8/23 (legislative day 30), and 9/20 (legislative day 31). That said, if they come into session and stay for a few days in July or August, the old versions of 09B .0101 and 09G .0205 become effective a little earlier. This is still fine if you're looking for a 10/1/22 effective date for all your new rules, as we discussed.

Second, to change the effective dates, all you'll need to do is specify the new effective date in the History Note of each rule. You can wait until I submit change requests, and do it then as part of the review process, or send in amended versions of the rules now. That's up to you. Either way, after speaking with Dana, she said you don't need to re-file your forms.

Let me know if you have any further questions or concerns.

Thanks!

Brian

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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---

**From:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>

**Sent:** Tuesday, July 19, 2022 10:06 AM

**To:** Dismukes, Leslie <[ldismukes@ncdoj.gov](mailto:ldismukes@ncdoj.gov)>; Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>

**Cc:** Smythe, John J <[jsmythe@NCDOJ.GOV](mailto:jsmythe@NCDOJ.GOV)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

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I'll set up a teams for 1:30.

Michelle



**MICHELLE SCHILLING**

Deputy Director

Criminal Justice Standards Division

Office: (919) 779-8205

Fax: (919) 779-8210

[MSchilling@ncdoj.gov](mailto:MSchilling@ncdoj.gov)

1700 Tryon Park Drive

Raleigh, NC 27602-0149

[ncdoj.gov](http://ncdoj.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: Rules Subject to Legislative Review - CJETS

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Sent:** Tuesday, July 19, 2022 10:07 AM

**To:** Schilling, Michelle <mschilling@ncdoj.gov>; Dismukes, Leslie <ldismukes@ncdoj.gov>

**Cc:** Smythe, John J <jsmythe@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** Re: [External] RE: Rules Subject to Legislative Review - CJETS

Sounds good.

Brian Liebman

Counsel to the North Carolina Rules Review Commission

Office of Administrative Hearings

(984)236-1948

[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>

**Sent:** Tuesday, July 19, 2022 10:05:12 AM

**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>; Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>

**Cc:** Smythe, John J <[jsmythe@NCDOJ.GOV](mailto:jsmythe@NCDOJ.GOV)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>

**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

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I can do 1-2:30

## Burgos, Alexander N

---

**Subject:** FW: [External] RE: Rules Subject to Legislative Review - CJETS

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Tuesday, July 19, 2022 9:38 AM  
**To:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Smythe, John J <jsmythe@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** Re: [External] RE: Rules Subject to Legislative Review - CJETS

I'm free all day. Whenever is good for you.

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Sent:** Tuesday, July 19, 2022 9:37:21 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Smythe, John J <jsmythe@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

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Absolutely.

What time(s) work for you?

Michelle



**MICHELLE SCHILLING**  
Deputy Director  
Criminal Justice Standards Division  
Office: (919) 779-8205  
Fax: (919) 779-8210  
[MSchilling@ncdoj.gov](mailto:MSchilling@ncdoj.gov)  
1700 Tryon Park Drive  
Raleigh, NC 27602-0149  
ncdoj.gov

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Tuesday, July 19, 2022 9:33 AM  
**To:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Cc:** Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>; Smythe, Jeffrey <[jsmythe@NCDOJ.GOV](mailto:jsmythe@NCDOJ.GOV)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** Re: [External] RE: Rules Subject to Legislative Review - CJETS

Hi Michelle,

I am a little confused here, I was asking about 09G .0205. Can we set up a time to talk later today?

Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: Rules Subject to Legislative Review - CJETS

---

**From:** Schilling, Michelle <mschilling@ncdoj.gov>

**Sent:** Monday, July 18, 2022 3:48 PM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Smythe, John J <jsmythe@NCDOJ.GOV>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

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Good afternoon, Brian:

I just spoke with Leslie.

We would like to have the old 12 NCAC 09B .0101 and 12 NCAC 09B .0103 heard at the RRC meeting on August 18<sup>th</sup>. Then would like the new 12 NCAC 09B .0101 and 12 NCAC 09B.0103 heard at the September RRC meeting on September 15. That way the new 12 NCAC 09B .0101 and 12 NCAC 09B.0103 can move forward with their "sister rules" that are scheduled to be heard at the RRC meeting in September.

Is this feasible?

Thank you for your continued assistance,

Michelle



**MICHELLE SCHILLING**  
Deputy Director  
Criminal Justice Standards Division  
Office: (919) 779-8205  
Fax: (919) 779-8210  
[MSchilling@ncdoj.gov](mailto:MSchilling@ncdoj.gov)  
1700 Tryon Park Drive  
Raleigh, NC 27602-0149  
ncdoj.gov

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---

Thank you, Brian. Let me touch base with Leslie for some direction on this rule.

Michelle



**MICHELLE SCHILLING**  
Deputy Director  
Criminal Justice Standards Division  
Office: (919) 779-8205  
Fax: (919) 779-8210  
[MSchilling@ncdoj.gov](mailto:MSchilling@ncdoj.gov)  
1700 Tryon Park Drive  
Raleigh, NC 27602-0149  
ncdoj.gov

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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Monday, July 18, 2022 3:17 PM  
**To:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Cc:** Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>; Smythe, Jeffrey <[jsmythe@NCDOJ.GOV](mailto:jsmythe@NCDOJ.GOV)>; Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

Hi Michelle,

I was following up with you in regards to this Rule. I'm assuming you're going to want to take this to the August meeting, rather than the July meeting, given the legislature's recent adjournment. Please let me know what your intent is, or if you want to discuss. I will be available until approximately 3:45, and then anytime tomorrow.

Thanks!  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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## Burgos, Alexander N

---

**From:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Sent:** Friday, July 8, 2022 3:05 PM  
**To:** Snyder, Ashley B  
**Cc:** McGhee, Dana; Dismukes, Leslie; Smythe, John J; Liebman, Brian R; Burgos, Alexander N  
**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

**Follow Up Flag:** Flag for follow up  
**Flag Status:** Flagged

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Thank you, Ashley. I appreciate the clarification.

Michelle



**MICHELLE SCHILLING**  
Deputy Director  
Criminal Justice Standards Division  
Office: (919) 779-8205  
Fax: (919) 779-8210  
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1700 Tryon Park Drive  
Raleigh, NC 27602-0149  
ncdoj.gov

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**From:** Snyder, Ashley B <ashley.snyder@oah.nc.gov>  
**Sent:** Friday, July 8, 2022 2:33 PM  
**To:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Cc:** McGhee, Dana <dana.McGhee@oah.nc.gov>; Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Smythe, Jeffrey <jsmythe@NCDOJ.GOV>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: Rules Subject to Legislative Review - CJETS

Hi Michelle,

Sorry I missed your call. Since this could impact a rule currently pending RRC review, I've copied Brian and it is probably best to correspond via email for record keeping purposes. To the extent you want to follow along with the explanation below, I'm looking at 150B-21.3(b1), (b2), and (d).

Essentially, a rule subject to legislative review goes into effect on the 31<sup>st</sup> legislative day if no bill has been introduced to disapprove the rule. Alternatively, the rule may go into effect earlier if the General Assembly adjourns sine die. Thus far, no bill has been introduced to disapprove your agency's rules. The General Assembly has not hit the 31 day mark nor has it adjourned sine die. As a result, your agency's rules are still pending legislative review.

These rules both have underlying temporary rules. Temporary rules remain in effect for 270 days “unless the permanent rule ... has been submitted to the Commission.” G.S. 150B-21.1. Since you have permanent rules filed and pending before RRC, your temporary rules remain in the Code. However, the permanent versions previously approved by RRC are still pending legislative review and are not yet in effect.

As for how this impacts your special meeting, I am not familiar with what you intended to do at that meeting and how this may impact your plans. Hopefully my explanation of where these rules stand helps you decide how to proceed.

**Ashley Snyder**

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

---

**From:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>

**Sent:** Friday, July 8, 2022 1:21 PM

**To:** Snyder, Ashley B <[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)>

**Cc:** McGhee, Dana <[dana.McGhee@oah.nc.gov](mailto:dana.McGhee@oah.nc.gov)>; Dismukes, Leslie <[ldismukes@ncdoj.gov](mailto:ldismukes@ncdoj.gov)>; Smythe, John J <[jsmythe@NCDOJ.GOV](mailto:jsmythe@NCDOJ.GOV)>

**Subject:** [External] RE: Rules Subject to Legislative Review - CJETS

**Importance:** High

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Good afternoon, Ashley:

I left you a voice mail earlier, but wanted to check to see how the information you provided in your email will affect our special meeting on July 11 for 12NCAC 09B.0101 and 2 NCAC 09G. 0205. We have a public hearing scheduled for those rules on July 11.

Thanks,

Michelle



**MICHELLE SCHILLING**

Deputy Director

Criminal Justice Standards Division

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Fax: (919) 779-8210

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1700 Tryon Park Drive

Raleigh, NC 27602-0149

[ncdoj.gov](http://ncdoj.gov)

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**From:** Snyder, Ashley B <[ashley.snyder@oah.nc.gov](mailto:ashley.snyder@oah.nc.gov)>

**Sent:** Tuesday, July 5, 2022 3:53 PM

**To:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>

**Cc:** McGhee, Dana <[dana.McGhee@oah.nc.gov](mailto:dana.McGhee@oah.nc.gov)>

**Subject:** RE: Rules Subject to Legislative Review - CJETS

Michelle,

On Friday, July 1, the legislature met in regular session, marking day 28 on the count of “legislative days” for purposes of legislative review of rules. Based on the terms of the [adjournment resolution](#), the General Assembly adjourned to reconvene on July 26. Pursuant to 150B-21.3(b1) and (d), “day of adjournment” is defined as the day the General Assembly adjourns “sine die.” Because the General Assembly adjourned to reconvene, the day count will continue with legislative day 29 when the General Assembly reconvenes on July 26. If you have any questions, please let me know.

Thanks,

**Ashley Snyder**

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

---

**From:** Snyder, Ashley B

**Sent:** Tuesday, June 28, 2022 10:18 AM

**To:** [MSchilling@ncdoj.gov](mailto:MSchilling@ncdoj.gov)

**Cc:** McGhee, Dana <[dana.McGhee@oah.nc.gov](mailto:dana.McGhee@oah.nc.gov)>

**Subject:** Rules Subject to Legislative Review - CJETS

Good morning, Michelle,

The rules listed below were approved by RRC but received at least 10 letters of objection, subjecting the rules to legislative review for the 2022 Session. Pursuant to 150B-21.3, any rule subject to legislative review may be disapproved by a bill filed within the first 30 legislative days. If no bill is filed, the rule becomes effective on the 31<sup>st</sup> legislative day.

Today is legislative day 25. As of this morning, we have not identified a bill disapproving your agency’s rules. We will provide another update once we have passed the 30<sup>th</sup> legislative day. Please let us know if you have any questions.

**CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION**

12 NCAC 09B .0101

12 NCAC 09G .0205

**Ashley Snyder**

Codifier of Rules

Office of Administrative Hearings

(984) 236-1941

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 12 NCAC 09G .0205 Request for Extension

---

**From:** Schilling, Michelle <mschilling@ncdoj.gov>

**Sent:** Monday, June 20, 2022 1:00 PM

**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>

**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>

**Subject:** RE: [External] RE: 12 NCAC 09G .0205 Request for Extension

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Thank you, Brian. I appreciate your support and assistance in this matter.

Michelle  
Michelle Schilling  
Deputy Director  
CJ Standards Division

---

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## Burgos, Alexander N

---

**Subject:** FW: [External] RE: 12 NCAC 09G .0205 Request for Extension  
**Attachments:** 06.2022 CJETS Extension Letter.pdf

---

**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Thursday, June 16, 2022 11:43 AM  
**To:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>  
**Subject:** RE: [External] RE: 12 NCAC 09G .0205 Request for Extension

Good morning,

Attached please find a letter of extension for the above captioned rule.

Thank you!  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)

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**From:** Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>  
**Sent:** Thursday, June 16, 2022 9:19 AM  
**To:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>; Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Subject:** [External] RE: 12 NCAC 09G .0205 Request for Extension

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Good morning Brian,

I was on the WebEx this morning so I saw the approval of our extension. Thank you for helping us marshal it through this process. Please let us know if you need anything as this process develops.

Best,  
Leslie



**Leslie Cooley Dismukes**

Criminal Bureau Chief

North Carolina Department of Justice

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114 W. Edenton St., Raleigh, NC 27603

ncdoj.gov

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## Burgos, Alexander N

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**From:** Liebman, Brian R  
**Sent:** Tuesday, June 7, 2022 10:39 AM  
**To:** Schilling, Michelle  
**Cc:** Dismukes, Leslie; Burgos, Alexander N  
**Subject:** RE: [External] 12 NCAC 09G .0205 Request for Extension

Hi Michelle,

Thanks for your request. I will recommend to RRC that they grant your request for an extension.

As we discussed over Teams, once you all have some clarity on the outcome of the legislative review process for 09G .0205, please just re-submit to me a new version of the Rule with the strikethroughs and underlines based off the July 2021 rule, rather than the existing temporary rule, and we'll review that for the July meeting.

Thanks!  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
Office of Administrative Hearings  
(984)236-1948  
brian.liebman@oah.nc.gov

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**From:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Sent:** Tuesday, June 7, 2022 9:57 AM  
**To:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Cc:** Dismukes, Leslie <ldismukes@ncdoj.gov>  
**Subject:** [External] 12 NCAC 09G .0205 Request for Extension  
**Importance:** High

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Good morning, Brian:

Pursuant to 150B-21.10(3), the Criminal Justice Education & Training Standards Commission (CJETS) is requesting an extension of RRC review for rule 12 NCAC 09G .0205. Additionally, it is requested WebEx invites for the June 16, 2022 RRC meeting be sent to CJETS Planning & Standards Committee Chair Leslie Cooley Dismukes and I in the event questions arise regarding the request for rule extension.

Respectfully,

Michelle



**MICHELLE SCHILLING**  
Deputy Director  
Criminal Justice Standards Division  
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Fax: (919) 779-8210  
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## Burgos, Alexander N

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**From:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Sent:** Friday, June 3, 2022 9:43 AM  
**To:** Liebman, Brian R  
**Cc:** Burgos, Alexander N; Dismukes, Leslie; Smythe, John J  
**Subject:** RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

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Thank you, Brian!



**MICHELLE SCHILLING**  
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Raleigh, NC 27602-0149  
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**From:** Liebman, Brian R <brian.liebman@oah.nc.gov>  
**Sent:** Friday, June 3, 2022 9:38 AM  
**To:** Schilling, Michelle <mschilling@ncdoj.gov>  
**Cc:** Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Smythe, Jeffrey <jsmythe@NCDOJ.GOV>  
**Subject:** RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

Michelle,

OK, that sounds fine to me. I'll wait to hear from you.

Best,  
Brian

Brian Liebman  
Counsel to the North Carolina Rules Review Commission  
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(984)236-1948  
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**From:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Sent:** Friday, June 3, 2022 9:17 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Dismukes, Leslie <[ldismukes@ncdoj.gov](mailto:ldismukes@ncdoj.gov)>; Smythe, John J <[jsmythe@NCDOJ.GOV](mailto:jsmythe@NCDOJ.GOV)>  
**Subject:** RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

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Brian

The Committee will more than likely follow your recommendation, they just want an opportunity to review and talk through a few items.

Michelle



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**From:** Schilling, Michelle  
**Sent:** Friday, June 3, 2022 9:16 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>; Cooley Dismukes, Leslie <[LDismukes@ncdoj.gov](mailto:LDismukes@ncdoj.gov)>; Smythe, Jeffrey <[jsmythe@NCDOJ.GOV](mailto:jsmythe@NCDOJ.GOV)>  
**Subject:** RE: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

Brian,

Our Committee is meeting on Monday, June 6 at 9:30am. Would it be too late to let you know no later than COB that day?

Thank you for your continued support and assistance,

Michelle



**MICHELLE SCHILLING**  
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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Friday, June 3, 2022 8:52 AM  
**To:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** Re: [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

Hi Michelle,

There's no official deadline, other than obviously it would need to be before the meeting. However, if you choose not to seek an extension, I will need time to review the rule, submit any change requests to you, receive your responses, and then develop my recommendation to RRC. So, time is somewhat short. Would it be possible for you to let me know before the end of today?

Thanks,  
Brian

Brian Liebman  
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**From:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Sent:** Friday, June 3, 2022 8:47:15 AM  
**To:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** [External] RE: 12 NCAC 09G .0205 - June 2022 RRC

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Good morning, Brian:

Thank you for providing the information regarding the subject rule. When do I need to let you know of the Commission's decision regarding an extension?



Michelle



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**From:** Liebman, Brian R <[brian.liebman@oah.nc.gov](mailto:brian.liebman@oah.nc.gov)>  
**Sent:** Thursday, June 2, 2022 5:21 PM  
**To:** Schilling, Michelle <[mschilling@ncdoj.gov](mailto:mschilling@ncdoj.gov)>  
**Cc:** Burgos, Alexander N <[alexander.burgos@oah.nc.gov](mailto:alexander.burgos@oah.nc.gov)>  
**Subject:** 12 NCAC 09G .0205 - June 2022 RRC

Hi Michelle,

First, it was a pleasure speaking with you just now! I'm glad you're enjoying getting to know the rulemaking process.

So, as we discussed, the rule that is currently before RRC for the June 2022 meeting has somewhat of an unusual history. A permanent amendment was approved by RRC at their July 2021 meeting, only to have the rule become subject to legislative review. In the interim, CJETS sought a temporary amendment to the Rule which was approved in February 2022 and is currently in the Administrative Code. The permanent rule currently before RRC is designed to replace that temporary rule. It is my understanding that the July 2021 version of the Rule, is currently under review at this session of the General Assembly. Per G.S. 150B-21.3(b1), a rule subject to legislative review becomes effective:

“on the earlier of the thirty first legislative day or the day of adjournment of the next regular session of the General Assembly that begins at least 25 days after the date the Commission approved the rule . . . . If a bill that specifically disapproves the rule is introduced in either house of the General Assembly, before the thirty first legislative day of that session, the rule becomes effective on the earlier of either the day an unfavorable final action is taken on the bill or the day that session of the General Assembly adjourns without ratifying a bill that specifically disapproves the rule.”

Currently, the GA is in session, and I believe they are on approximately the 11<sup>th</sup> legislative day of this session (I will check to make sure, but it is in that neighborhood). Thus, they have approximately another twenty legislative days in which to introduce a bill specifically disapproving 12 NCAC 09G .0205. If RRC approves the version of 09G .0205 currently before it, the new permanent rule would become effective 7/1/22. At the same time, if the GA fails to introduce a bill disapproving the prior July 2021 version of the rule (sorry for the double negative), that version of the Rule would become effective as early as late June, creating a situation where it is unclear which version of the Rule should go into the Code.

As such, I believe it would be beneficial for both CJETS and RRC if the agency were to request an extension under G.S. 150B-21.10(3). Assuming RRC grants the extension, pursuant to G.S. 150B-21.13, the agency will have an additional 70 days before RRC has to render a final opinion on the Rule. This would give us time for the legislative review process to reach its conclusion, providing clarity as to which version of the Rule would go into the Administrative Code, and allowing us time to clear up any other issues that might come up in the wake of legislative review.

If you agree, just email me back requesting an extension, and I will recommend to RRC at the upcoming meeting that they approve it.

Again, it was a pleasure speaking with you, and hope you have a great rest of your day!

Thanks,  
Brian

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