

Burgos, Alexander N

From: Liebman, Brian R
Sent: Tuesday, August 16, 2022 6:48 PM
To: Burgos, Alexander N
Subject: Fwd: [External] 12 NCAC 09B .0101
Attachments: 12 NCAC 09B .0101 Responses.docx; 12 NCAC 09B .0101 -Rule Changes.doc

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For the website

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From: Schilling, Michelle <mschilling@ncdoj.gov>
Sent: Tuesday, August 16, 2022 6:41:30 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>
Cc: Dismukes, Leslie <ldismukes@ncdoj.gov>
Subject: [External] 12 NCAC 09B .0101

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Good evening, Brian:

Changes and additional information regarding 12 NCAC 09B .0101.

Thank you for your assistance,

Michelle



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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 09B .0101

Recommended Change #1: *"With respect to the change in language to "Law Enforcement Officer" throughout the Rules, is this term defined elsewhere? The relevant statutes (17C-2, 17C-6, 17-10) all refer to "Criminal Justice Officer".*

Response: 12 NCAC 09A .0103(20) defines "Law Enforcement Officer" as an appointee of a Criminal Justice Agency, an agency of the State, or any political subdivision of the State who, by virtue of his or her office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from the title "Law Enforcement Officer" are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E. Law enforcement officers are a subset of "Criminal Justice Officers" as contemplated in N.C.G.S. § 17C-2(3).

Recommended Change #2: *"In (10), line 82, please clarify the term "committed". Specifically, how it is determined that an officer committed a crime, if he or she was not convicted of it?"*

Response: 12 NCAC 09A .0103(5) defines "Commission of an offense" as a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense." N.C.G.S. § 17C-6(a)(3) allows the Commission to "certify and recertify, suspend, revoke, or deny, pursuant to the standards that it has established for the purpose." The Commission has established the "commission of an offense" as one of the standards by which we make certification determinations, which is permissible under the above-mentioned statute.

12 NCAC 09A .0201(b), *"before taking any action against an agency, school, or individual for a violation, the Standards Division shall investigate the alleged violation and present a report of its findings to the Probable Cause Committee of the Commission."*

Pursuant to 12 NCAC 09A .0207, an individual has 30 days from the date of receipt of notice of propose action by the Commission to request a contested case hearing.

Pursuant to 12 NCAC 09A .0203, *"When any person certified by the Commission is found to have knowingly and willfully violated any provision or requirement of these Rules, the Commission may take action to correct the violation and to ensure that the violation does not re-occur, including:*

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

Recommended Change #3: *"In (13), what is a qualifying event"? Is this term defined elsewhere?"*

Response: "Qualifying event" is not defined elsewhere. The plain language of each subsection of 09B .0101(13)(a) and (b) indicates that "qualifying event" modifies the conduct contained in each subset of the rule. For example, in (a), the qualifying event is charge or arrest for a criminal offense. In (b) the qualifying event is a plea of no contest, guilty, or when an officer is found guilty.

Recommended Change #4: *"Is (13), is there a reason (a) and (b) cannot be combined?"*

Response: 13(a) and (b) have been combined to read: "within ~~30 days~~ five business days of the qualifying event notify the Standards Division and the appointing ~~department~~ agency head in writing of all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);

Recommended Change #5: *"In (13)(c), is there a reason the 'appointing agency head' is omitted, despite being in (a) and (b)?"*

Response: This was an oversight. We have added agency head to 13(c).

1 12 NCAC 09B .0101, is amended as published in 36:21 NCR 1688 as follows:

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

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

7
8 12 NCAC 09B .0101 MINIMUM STANDARDS FOR ~~CRIMINAL JUSTICE~~ LAW ENFORCEMENT
9 OFFICERS

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

- 12 (1) be a citizen of the United States;
- 13 (2) be at least 20 years of age; ~~[and be at least 18 years of age for telecommunications;]~~
- 14 (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09B .0106;
- 15 ~~(3) be of good moral character pursuant to G.S. 17C 10 as evidenced by the following:~~
- 16 ~~(a) not having been convicted of a felony;~~
- 17 ~~(b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for~~
- 18 ~~five years or the completion of any corrections supervision imposed by the courts,~~
- 19 ~~whichever is later;~~
- 20 (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;
- 21 (5) have had a medical examination as required by 12 NCAC 09B .0104;
- 22 ~~(e) not having been convicted of an offense that would prohibit the possession of a firearm or~~
- 23 ~~ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with~~
- 24 ~~subsequent amendments and editions and can be found at no cost at~~
- 25 ~~[https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf)~~
- 26 ~~partI-chap44.pdf;~~
- 27 ~~(d) having submitted to and produced a negative result on a drug test within 60 days of~~
- 28 ~~employment or any in service drug screening required by the appointing agency that~~
- 29 ~~meets the certification standards of the Department of Health and Human Services for~~
- 30 ~~Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet~~
- 31 ~~this requirement may be obtained, at no cost, at [https://www.samhsa.gov/programs-](https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list)~~
- 32 ~~campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list;~~
- 33 ~~(e) submitting to a background investigation consisting of the verification of age and~~
- 34 ~~education and a criminal history check of local, state, and national files;~~
- 35 ~~(f) being truthful in providing information to the appointing agency and to the Standards~~
- 36 ~~Division for the purpose of obtaining probationary or general certification;~~

- ~~(g) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the applicant from holding such certification, pursuant to G.S. 17C-13; and~~
- ~~(h) not having engaged in any conduct that brings into question the truthfulness or credibility of the officer, or involves "moral turpitude." "Moral turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: In re Willis 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.~~
- ~~(4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;~~
- ~~(6)(5) have been examined and certified by a licensed surgeon, physician, physician assistant, or nurse practitioner to meet physical requirements necessary to fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications: as described in 12 NCAC 09C .0310;~~
- ~~(a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;~~
- ~~(b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;~~
- ~~(c) the drug screen shall test for the presence of at least cannabis, cocaine, phenylclidine (PCP), opiates, and amphetamines or their metabolites;~~
- ~~(d) the test threshold values meet the requirements established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR 7920 (2017) incorporated by reference, including later amendments and editions found at no cost at <https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs>;~~
- ~~(e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and~~
- ~~(f) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples;~~

- (7) ~~(6)~~ have been administered a psychological screening examination in accordance with G.S. 17C-10(c). The psychological screening shall be valid for a period of one year from the date on which it was administered.
- ~~(8) (7)~~ have been interviewed personally by the department head or the department head representative or representatives to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate; and as described in 12 NCAC 09B .0105; and
- ~~(9)~~ have a background investigation conducted by the employing agency, including a personal interview as required by 12 NCAC 09B .0102;
- ~~(10)~~ not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;
- ~~(11)~~ for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission of the application for appointment to the Commission and must be completed using the agency approved service handgun(s) and any other weapon(s) that the applicant has been issued or authorized to use by the agency; and
- ~~(12)~~ be of good moral character as defined in: : In re Willis, 288 N.C. 1, 215 S.E. 2d 771 *appeal dismissed* 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions.
- ~~(13)(8)~~ make Make the following notifications:
- (a) within 30 days five business days of the qualifying event notify the Standards Division and the appointing department agency head in writing of all criminal offenses for which the officer is charged, or arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);
- (b) within 30 days five business days of the qualifying event notify the Standards Division and the appointing department agency head in writing of all criminal offenses for which the officer pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);
- (b)(e) within 30 days five business days of service, officers shall notify the Standards Division and the appointing agency head of all Domestic Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the officer;

- 1 ~~(c)(d)~~ within ~~30 days~~ five business days of the date the case was disposed of in court, the
2 ~~department agency~~ head, provided he or she has knowledge of the officer's arrests or
3 criminal charges and final dispositions, shall also notify the Standards Division of arrests
4 or criminal charges and final disposition;
- 5 ~~(d)(e)~~ within ~~30~~ five business days of the issuance of all Domestic Violence Protective Orders
6 (G.S. 50B) and Civil No Contact Orders (G.S. 50C), the ~~department~~ agency head,
7 provided he or she has knowledge of the order, shall also notify the Standards Division of
8 these orders.
- 9 ~~(9)~~ ~~(e)(f)~~ The required notifications in this Rule shall be in writing and shall specify the nature of
10 the offense or order, the court in which the case was handled, the date of the arrest,
11 criminal charge, or service of the order, and the final disposition. The notification shall
12 include a certified copy of the order or court documentation and final disposition from the
13 Clerk of Court in the county of adjudication. The requirements of this Item shall be
14 applicable at all times during which the officer is employed and certified by the
15 Commission and shall also apply to all applicants for certification. Receipt by the
16 Standards Division of a single notification, from the officer or the ~~department~~ agency
17 head, shall be sufficient notice for compliance with this Item.
- 18 (14) The requirements of this Rule shall apply to all applicants for certification and shall also apply at
19 all times during which the law enforcement officer is certified by the Commission.

20

21 *History Note: Authority G.S. 17C-6; 17C-10;*
22 *Eff. January 1, 1981;*
23 *Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995;*
24 *November 1, 1993; July 1, 1990;*
25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
26 *2019;*
27 *Amended Eff. October 1, 2020;*
28 *Temporary Amendment Eff. February 15, 2022.*
29 *Amended Eff. October 1, 2022*

30

Burgos, Alexander N

Subject: FW: [External] Requests for Technical Changes

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

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Burgos, Alexander N

Subject: FW: [External] Requests for Technical Changes

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

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

To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>

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

Subject: RE: [External] Requests for Technical Changes

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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**

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 30th of the last year of each member's respective term. Appointments by the General Assembly shall serve two-year terms to conclude on June 30th 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 Count 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

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

Office: (919) 779-8205

Fax: (919) 779-8210

MSchilling@ncdoj.gov

1700 Tryon Park Drive

Raleigh, NC 27602-0149

ncdoj.gov

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Burgos, Alexander N

Subject: FW: [External] Requests for Technical Changes

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

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Email correspondence to and from this address may be subject to the North Carolina Public Records Law and may be disclosed to third parties by an authorized state official.

Burgos, Alexander N

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

E-mail correspondence to and from this address may be subject to the North Carolina Public Records Law N.C.G.S. Chapter 132 and may be disclosed to third parties.

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

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

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 09B .0101

Recommended Change #1: *"With respect to the change in language to "Law Enforcement Officer" throughout the Rules, is this term defined elsewhere? The relevant statutes (17C-2, 17C-6, 17-10) all refer to "Criminal Justice Officer".*

Response: 12 NCAC 09A .0103(20) defines "Law Enforcement Officer" as an appointee of a Criminal Justice Agency, an agency of the State, or any political subdivision of the State who, by virtue of his or her office, is empowered to make arrests for violations of the laws of this State. Specifically excluded from the title "Law Enforcement Officer" are sheriffs and their sworn appointees with arrest authority who are governed by the provisions of G.S. 17E. Law enforcement officers are a subset of "Criminal Justice Officers" as contemplated in N.C.G.S. § 17C-2(3).

Recommended Change #2: *"In (10), line 82, please clarify the term "committed". Specifically, how it is determined that an officer committed a crime, if he or she was not convicted of it?"*

Response: 12 NCAC 09A .0103(5) defines "Commission of an offense" as a finding by the North Carolina Criminal Justice Education and Training Standards Commission or equivalent regulating body from another state that a person performed the acts necessary to satisfy the elements of a specified criminal offense." N.C.G.S. § 17C-6(a)(3) allows the Commission to "certify and recertify, suspend, revoke, or deny, pursuant to the standards that it has established for the purpose." The Commission has established the "commission of an offense" as one of the standards by which we make certification determinations, which is permissible under the above-mentioned statute.

Recommended Change #3: *"In (13), what is a qualifying event"? Is this term defined elsewhere?"*

Response: "Qualifying event" is not defined elsewhere. The plain language of each subsection of 09B .0101(13)(a) and (b) indicates that "qualifying event" modifies the conduct contained in each subset of the rule. For example, in (a), the qualifying event is charge or arrest for a criminal offense. In (b) the qualifying event is a plea of no contest, guilty, or when an officer is found guilty.

Recommended Change #4: *"Is (13), is there a reason (a) and (b) cannot be combined?"*

Response: 13(a) and (b) have been combined to read: "within ~~30 days~~ five business days of the qualifying event notify the Standards Division and the appointing ~~department~~ agency head in writing of all criminal offenses for which the officer is charged, arrested, pleads no contest, pleads guilty, or of which the officer is found guilty. This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);

Recommended Change #5: *"In (13)(c), is there a reason the 'appointing agency head' is omitted, despite being in (a) and (b)?"*

Response: This was an oversight. We have added agency head to 13(c).

1 12 NCAC 09B .0101, is amended as published in 36:21 NCR 1688 as follows:

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

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

7
8 12 NCAC 09B .0101 MINIMUM STANDARDS FOR ~~CRIMINAL JUSTICE~~ LAW ENFORCEMENT
9 OFFICERS

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

- 12 (1) be a citizen of the United States;
- 13 (2) be at least 20 years of age; ~~[and be at least 18 years of age for telecommunications;]~~
- 14 (3) be a high school graduate, or the equivalent as defined in 12 NCAC 09B .0106;
- 15 ~~(3) be of good moral character pursuant to G.S. 17C 10 as evidenced by the following:~~
- 16 ~~(a) not having been convicted of a felony;~~
- 17 ~~(b) not having been convicted of a misdemeanor as defined in 12 NCAC 09B .0111(1) for~~
- 18 ~~five years or the completion of any corrections supervision imposed by the courts,~~
- 19 ~~whichever is later;~~
- 20 (4) have been fingerprinted by the employing agency in the manner provided in 12 NCAC 09B .0103;
- 21 (5) have had a medical examination as required by 12 NCAC 09B .0104;
- 22 ~~(e) not having been convicted of an offense that would prohibit the possession of a firearm or~~
- 23 ~~ammunition, under 18 U.S.C. 922, which is hereby incorporated by reference with~~
- 24 ~~subsequent amendments and editions and can be found at no cost at~~
- 25 ~~[https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-](https://www.govinfo.gov/content/pkg/USCODE-2018-title18/pdf/USCODE-2018-title18-partI-chap44.pdf)~~
- 26 ~~partI-chap44.pdf;~~
- 27 ~~(d) having submitted to and produced a negative result on a drug test within 60 days of~~
- 28 ~~employment or any in service drug screening required by the appointing agency that~~
- 29 ~~meets the certification standards of the Department of Health and Human Services for~~
- 30 ~~Federal Workplace Drug Testing Programs. A list of certified drug testing labs that meet~~
- 31 ~~this requirement may be obtained, at no cost, at [https://www.samhsa.gov/programs-](https://www.samhsa.gov/programs-campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list)~~
- 32 ~~campaigns/drug-free-workplace/guidelines-resources/drug-testing/certified-lab-list;~~
- 33 ~~(e) submitting to a background investigation consisting of the verification of age and~~
- 34 ~~education and a criminal history check of local, state, and national files;~~
- 35 ~~(f) being truthful in providing information to the appointing agency and to the Standards~~
- 36 ~~Division for the purpose of obtaining probationary or general certification;~~

- ~~(g) not having pending or outstanding felony charges that, if convicted of such charges, would disqualify the applicant from holding such certification, pursuant to G.S. 17C-13; and~~
- ~~(h) not having engaged in any conduct that brings into question the truthfulness or credibility of the officer, or involves "moral turpitude." "Moral turpitude" is conduct that is contrary to justice, honesty, or morality, including conduct as defined in: In re Willis 288 N.C. 1, 215 S.E. 2d 771 appeal dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174(1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions that cite these cases as authority.~~
- ~~(4) have been fingerprinted and a search made of local, state, and national files to disclose any criminal record;~~
- ~~(6)(5) have been examined and certified by a licensed surgeon, physician, physician assistant, or nurse practitioner to meet physical requirements necessary to fulfill the officer's particular responsibilities and shall have produced a negative result on a drug screen administered according to the following specifications: as described in 12 NCAC 09C .0310;~~
- ~~(a) the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs;~~
- ~~(b) a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;~~
- ~~(c) the drug screen shall test for the presence of at least cannabis, cocaine, phenacyclidine (PCP), opiates, and amphetamines or their metabolites;~~
- ~~(d) the test threshold values meet the requirements established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR 7920 (2017) incorporated by reference, including later amendments and editions found at no cost at <https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs>;~~
- ~~(e) the test conducted shall be not more than 60 days old, calculated from the time when the laboratory reports the results to the date of employment; and~~
- ~~(f) the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples;~~

- (7) ~~(6)~~ have been administered a psychological screening examination in accordance with G.S. 17C-10(c). The psychological screening shall be valid for a period of one year from the date on which it was administered.
- ~~(8) (7)~~ have been interviewed personally by the department head or the department head representative or representatives to determine such things as the applicant's appearance, demeanor, attitude, and ability to communicate; and as described in 12 NCAC 09B .0105; and
- ~~(9)~~ have a background investigation conducted by the employing agency, including a personal interview as required by 12 NCAC 09B .0102;
- ~~(10)~~ not have committed or been convicted of a crime or crimes as specified in 12 NCAC 09B .0111;
- ~~(11)~~ for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily complete the employing agency's in-service firearms training program as prescribed in 12 NCAC 09E .0105 and .0106. Such firearms training compliance must have occurred prior to submission of the application for appointment to the Commission and must be completed using the agency approved service handgun(s) and any other weapon(s) that the applicant has been issued or authorized to use by the agency; and
- ~~(12)~~ be of good moral character as defined in: : In re Willis, 288 N.C. 1, 215 S.E. 2d 771 *appeal dismissed* 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E. 2d 854 (1940); In re Legg, 325 N.C. 658, 386 S.E. 2d 174 (1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E. 2d 647 (1983); and later court decisions.
- ~~(13)(8)~~ make Make the following notifications:
- (a) within 30 days five business days of the qualifying event notify the Standards Division and the appointing ~~department~~ agency head in writing of all criminal offenses for which the officer is charged, ~~or arrested, pleads no contest, pleads guilty, or of which the officer is found guilty.~~ This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);
- (b) within 30 days five business days of the qualifying event notify the Standards Division and the appointing ~~department~~ agency head in writing of all criminal offenses for which the officer ~~pleads no contest, pleads guilty, or of which the officer is found guilty.~~ This shall include traffic offenses identified in the Class B Misdemeanor Manual and offenses of driving under the influence (DUI) or driving while impaired (DWI);
- (c) within 30 days five business days of service, officers shall notify the Standards Division and the appointing agency head of all Domestic Violence Protective Order (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are issued by a judicial official against the officer;

- 1 (d) within ~~30 days~~ five business days of the date the case was disposed of in court, the
2 ~~department agency~~ head, provided he or she has knowledge of the officer's arrests or
3 criminal charges and final dispositions, shall also notify the Standards Division of arrests
4 or criminal charges and final disposition;
- 5 (e) within ~~30~~ five business days of the issuance of all Domestic Violence Protective Orders
6 (G.S. 50B) and Civil No Contact Orders (G.S. 50C), the ~~department~~ agency head,
7 provided he or she has knowledge of the order, shall also notify the Standards Division of
8 these orders.
- 9 ~~(9)~~ (f) The required notifications in this Rule shall be in writing and shall specify the nature of
10 the offense or order, the court in which the case was handled, the date of the arrest,
11 criminal charge, or service of the order, and the final disposition. The notification shall
12 include a certified copy of the order or court documentation and final disposition from the
13 Clerk of Court in the county of adjudication. The requirements of this Item shall be
14 applicable at all times during which the officer is employed and certified by the
15 Commission and shall also apply to all applicants for certification. Receipt by the
16 Standards Division of a single notification, from the officer or the ~~department~~ agency
17 head, shall be sufficient notice for compliance with this Item.
- 18 (14) The requirements of this Rule shall apply to all applicants for certification and shall also apply at
19 all times during which the law enforcement officer is certified by the Commission.

20
21 *History Note: Authority G.S. 17C-6; 17C-10;*
22 *Eff. January 1, 1981;*
23 *Amended Eff. April 1, 2018; October 1, 2017; September 1, 2001; April 1, 1999; January 1, 1995;*
24 *November 1, 1993; July 1, 1990;*
25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
26 *2019;*
27 *Amended Eff. October 1, 2020;*
28 *Temporary Amendment Eff. February 15, 2022.*
29 *Amended Eff. October 1, 2022*
30

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

AGENCY: Criminal Justice Education and Training Standards Commission

RULE CITATION: 12 NCAC 09B .0103

Recommended Change #1: *“In (c), line 15, please clarify the reference and citations to the General Statutes. Are you referring to the entirety of Chapters 121 and 132?”*

Response:

132-8.1

121-4

Recommended Change #2: *“In (d), line 19, is there another rule or statute that identifies the actions that require certification by the Commission? Otherwise, there is ambiguity as to what an applicant may or may not do until the agency receives the criminal record report.”*

Response: 12 NCAC 09C .0303(a) identifies the requirement for Probationary Certification before a prospective criminal justice officer may be administered the oath of office, exercise the power of arrest, or commence active service as an officer. 12 NCAC 09C .0303(b) identifies the requirements to be certified as a probationary officer.

1 12 NCAC 09B .0103, is amended as published in 36:21 NCR 1688 as follows:

2
3 **12 NCAC 09B .0103 FINGERPRINT CRIMINAL HISTORY RECORD CHECK**

4 (a) Each applicant for ~~employment certification~~ shall submit electronic fingerprints in the Statewide Automated
5 Fingerprint Identification System (SAFIS). ~~be fingerprinted twice, using FBI Form FD 258, Fingerprint Record~~
6 ~~Card.~~

7 (b) The employing agency ~~shall check the applicant's fingerprints against local files and~~ shall forward both
8 ~~completed the applicant's fingerprints fingerprint forms~~ to the North Carolina State Bureau of Investigation for
9 ~~fingerprint and a criminal history record check checks~~ utilizing fingerprints against State and federal files.

10 (c) The employing agency will receive a report of the results of the fingerprint criminal history record check
11 utilizing fingerprints against State and federal files. ~~Regardless of the disposition of the inquiry, the~~ The employing
12 agency shall ~~permanently~~ retain the results of the fingerprint criminal history record check utilizing fingerprints in
13 ~~the applicant's personnel file. compliance with the North Carolina Department of Natural and Cultural Resources~~
14 Retention and Disposition Schedule established pursuant to G.S. 121-4 and G.S. 132-8.1. The employing agency
15 shall include the results of the fingerprint criminal history record check with the applications submitted to the
16 Commission.

17 (d) An applicant for ~~employment certification~~ as a law enforcement officer may not ~~be employed or placed in a~~
18 perform any action sworn law enforcement position requiring certification by the Commission prior to the date on
19 which the employing agency ~~receives~~ receives the report of the results of the fingerprint criminal history record
20 check utilizing fingerprints. ~~Check unless all of the following requirements are met:~~

21 (1) ~~The employing department head determines that the delay in receiving the fingerprint record~~
22 ~~check will result in undue hardship to the agency and certifies that determination to the~~
23 ~~Commission.~~

24 (2) ~~The preliminary criminal history investigation conducted by the employing agency has failed to~~
25 ~~disclose any disqualifying criminal record.~~

26 (3) ~~The applicant meets all of the minimum standards for employment and certification contained in~~
27 ~~this Subchapter.~~

28 (4) ~~The Fingerprint Record Cards have in fact been executed, delivered to, and received by the State~~
29 ~~Bureau of Investigation for the purpose of a criminal history search.~~

30 (5) ~~The applicant has completed and signed the applicant's certificate (Section A) of the Commission's~~
31 ~~Report of Appointment, wherein the applicant's temporary employment and probationary law~~
32 ~~enforcement officer certification is acknowledged to be contingent on the consistency of the~~
33 ~~fingerprint record check with the information provided in the Personal History Statement Form.~~

34 (e) ~~An applicant for employment as a criminal justice officer other than a law enforcement officer may be employed~~
35 ~~prior to the date on which the employing agency receives the report of the results of the fingerprint record check, if~~
36 ~~all of the following requirements are met:~~

1 ~~(1) The completed Fingerprint Record Cards have been forwarded to and received by the State Bureau~~
2 ~~of Investigation.~~

3 ~~(2) The applicant meets all other minimum requirements for employment and certification.~~

4 ~~(3) The applicant's continued employment is contingent upon the agency's review and evaluation of~~
5 ~~the results of the fingerprint record check.~~

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

8 *Eff. January 1, 1981;*

9 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,*
10 *2019.*

11 *Amended Eff. October 1, 2022*
12

Burgos, Alexander N

Subject: FW: [External] Joint Rules

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

Sent: Wednesday, August 3, 2022 12:44 PM

To: Jones, Sirena C <scjones@ncdoj.gov>

Cc: Dismukes, Leslie <ldismukes@ncdoj.gov>; Schilling, Michelle <mschilling@ncdoj.gov>; Burgos, Alexander N <alexander.burgos@oah.nc.gov>; Squires, Richard N <rsquires@ncdoj.gov>

Subject: RE: [External] Joint Rules

Thank you!

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Counsel to the North Carolina Rules Review Commission

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Burgos, Alexander N

From: Jones, Sirena <Scjones@ncdoj.gov>
Sent: Wednesday, August 3, 2022 12:31 PM
To: Liebman, Brian R
Cc: Dismukes, Leslie; Schilling, Michelle; Burgos, Alexander N; Squires, Richard N
Subject: [External] Joint Rules
Attachments: 12 NCAC 10B .0301.docx; 12 NCAC 10B .0302.docx; 12 NCAC 10B .0303.docx; 12 NCAC 10B .0304.docx; 12 NCAC 10B .0305.docx; 12 NCAC 10B .0306.docx; 12 NCAC 10B .0307.docx; 12 NCAC 10B .0410.docx

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Good afternoon Mr. Liebman.

Attached you will find the rules filed for the Sheriffs' Commission.

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS
12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT
12 NCAC 10B .0303 FINGERPRINT CRIMINAL HISTORY RECORDS CHECK
12 NCAC 10B .0304 MEDICAL EXAMINATION
12 NCAC 10B .0305 BACKGROUND INVESTIGATION
12 NCAC 10B .0306 EMPLOYMENT INTERVIEW
12 NCAC 10B .0307 CRIMINAL HISTORY RECORD
12 NCAC 10B .0410 AGENCY REPORTING OF DRUG SCREENING RESULTS

Let me know if you have questions.

Sirena



Sirena Jones
Deputy Director
Sheriffs' Standards Division
Phone: 919-779-8213
Fax: 919-662-4515
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www.ncdoj.gov

Please note messages to or from this address may be public records.

12 NCAC 10B .0301 is proposed to be amended as follows:

12 NCAC 10B .0301 MINIMUM STANDARDS FOR JUSTICE OFFICERS

(a) Every ~~Justice Officer~~ justice officer employed or certified in North Carolina shall:

- (1) be a citizen of the United States;
- (2) be ~~24~~ at least 20 years of age ~~for all deputies and detention officers and [and be at least 18 years of age for all telecommunicators; telecommunicators;]~~
- (3) be a high school graduate, or the equivalent ~~(GED); as defined in 12 NCAC 10B .0302;~~
- (4) have been fingerprinted by the employing ~~agency; in the manner provided in 12 NCAC 10B .0303;~~
- (5) have had a medical examination as required by 12 NCAC 10B .0304;
- (6) have produced a negative result on a drug screen ~~administered according to the following specifications: as described in 12 NCAC 10B .0410;~~
 - (A) ~~the drug screen shall be a urine test consisting of an initial screening test using an immunoassay method and a confirmatory test on an initial positive result using a gas chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests as may be authorized or mandated by the Department of Health and Human Services for Federal Workplace Drug Testing Programs [https://www.samhsa.gov/workplace];~~
 - (B) ~~a chain of custody shall be maintained on the specimen from collection to the eventual discarding of the specimen;~~
 - (C) ~~the drugs whose use shall be tested for shall include cannabis, cocaine, phenylethylamine (PCP), opiates, and amphetamines or their metabolites;~~
 - (D) ~~the test threshold values established by the Department of Health and Human Services for Federal Workplace Drug Testing Programs are incorporated by reference, including subsequent amendments and editions. Copies of this information may be obtained from the National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857 [http://www.drugabuse.gov/] at no cost;~~
 - (E) ~~the test results shall be dated no more than 60 days before employment or appointment, whichever is earlier;~~
 - (F) ~~the laboratory conducting the test shall be certified for federal workplace drug testing programs, and shall adhere to applicable federal rules, regulations, and guidelines pertaining to the handling, testing, storage, and preservation of samples; and~~
 - (G) ~~each drug test laboratory report shall be reviewed by a medical review officer (MRO), who shall be a licensed physician;~~
- (7) ~~make the following notifications:~~
 - (A) ~~within five business days, notify the Standards Division and the appointing department head in writing of all criminal offenses with which the officer is charged. This shall include all criminal offenses except minor traffic offenses. A minor traffic offense means any offense under G.S. 20 or similar laws of other jurisdictions; except those Chapter 20~~

- 1 offenses defined as either a Class A or B Misdemeanor in 12 NCAC 10B .0103(10). The
2 initial notification required must specify the nature of the offense, the date of offense, and
3 the arresting agency. Within five business days, notify the Standards Division of all
4 Domestic Violence Orders (G.S. 50B) and Civil No Contact Orders (G.S. 50C) that are
5 issued by a judicial official against the justice officer and that provide an opportunity for
6 both parties to be present;
- 7 (B) within 20 days of the date the case was disposed, notify the appointing department head of
8 the adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B), and Civil
9 No Contact Orders (G.S. 50C). The department head, provided he or she has knowledge of
10 the officer's charges, Domestic Violence Orders (G.S. 50B), and Civil No Contact Orders
11 (G.S. 50C), shall also notify the Division within 30 days of the date the case or order was
12 disposed of in court.
- 13 (C) within 30 days of the date the case was disposed, notify the Standards Division of the
14 adjudication of these criminal charges, Domestic Violence Orders (G.S. 50B), and Civil
15 No Contact Orders (G.S. 50C);
- 16 (D) the required notifications of adjudication shall specify the nature of the offense, the court
17 in which the case was handled, and the date of disposition and shall include a certified copy
18 of the final disposition from the Clerk of Court in the county of adjudication;
- 19 (E) receipt by the Standards Division of timely notification of the initial offenses charged and
20 of adjudication of those offenses, from either the officer or the department head, shall be
21 sufficient notice for compliance with this Subparagraph;
- 22 (7) have been administered a psychological screening examination as described by G.S. 17E-7. This
23 psychological screening examination shall be valid for a period of one year from the date on which
24 it was administered;
- 25 (8) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal
26 dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325
27 N.C. 658, 386 S.E.2d 174 (1989); In re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In
28 re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647
29 (1983); and later court decisions that cite these cases as authority;
- 30 (8) have been interviewed as described in 12 NCAC 10B .0306;
- 31 (9) have a background investigation conducted by the employing agency, including a personal
32 interview prior to employment as required by Rules .0305 and .0306 of this Section. as required by
33 12 NCAC 10B .0305;
- 34 (10) not have committed or been convicted of a crime or crimes specified in 12 NCAC 10B .0307;
- 35 (11) for personnel who are authorized to carry a firearm in the execution of their duties, satisfactorily
36 complete the employing agency's in-service firearms training program as prescribed in 12 NCAC
37 10B .2103 and .2104. Such firearms training compliance must have occurred prior to submission of

1 the application for appointment to the Commission and must be completed using the agency
2 approved service handgun(s) and any other weapons(s) that the applicant has been issued or
3 authorized to use by the agency;

4 (12) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal
5 dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325
6 N.C. 658, 386 S.E.2d 174 (1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In
7 re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647
8 (1983); and later court decisions.

9 (13) make the following notifications:

10 (a) within five business days of the qualifying event, notify the Standards Division and the
11 appointing agency head in writing of all criminal offenses for which the officer is charged
12 or arrested. This shall include traffic offenses identified in the Class B Misdemeanor
13 Manual and offenses of driving under the influence (DUI) or driving while impaired
14 (DWI);

15 (b) within five business days of the qualifying event notify the Standards Division and the
16 appointing agency head in writing of all criminal offenses for which the officer pleads no
17 contest, pleads guilty, or of which the officer is found guilty. This shall include traffic
18 offenses identified in the Class B Misdemeanor Manual and offenses of driving under the
19 influence (DUI) or driving while impaired (DWI);

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

23 (d) within five business days of the date the case was disposed of in court, the agency head,
24 provided he or she has knowledge of the officer's arrests or criminal charges and final
25 dispositions, shall also notify the Standards Division of arrests or criminal charges and final
26 disposition;

27 (e) within five business days of the issuance of all Domestic Violence Protective Orders (G.S.
28 50B) and Civil No Contact Orders (G.S. 50C), the agency head, provided he or she has
29 knowledge of the order, shall also notify the Standards Division of these orders.

30 (f) The required notifications in this Rule shall be in writing and shall specify the nature of the
31 offense or order, the court in which the case was handled, the date of the arrest, criminal
32 charge, or service of the order, and the final disposition. The notification shall include a
33 certified copy of the order or court documentation and final disposition from the Clerk of
34 Court in the county of adjudication. The requirements of this Item shall be applicable at all
35 times during which the officer is employed and certified by the Commission and shall also
36 apply to all applicants for certification. Receipt by the Standards Division of a single

1 notification, from the officer or the agency head, shall be sufficient notice for compliance
2 with this Item.

3 ~~(b)(14)~~ ~~The~~ the requirements of this Rule shall apply to all applications for certification and shall also apply
4 at all times during which the justice officer is certified by the Commission.

5
6 *History Note: Authority G.S. 17E-7;*
7 *Eff. January 1, 1989;*
8 *Amended Eff. January 1, 2018; February 1, 2014; January 1, 2006; January 1, 2005; August 1,*
9 *2002; January 1, 1996; January 1, 1994; January 1, 1993; January 1, 1992; July 1, 1990; January*
10 *1, 1990;*
11 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
12 *2018;*

13
14 *Amended Eff. January 1, 2023.*
15

12 NCAC 10B .0302 is proposed to be amended as follows:

12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT

(a) Each applicant for Justice Officer certification shall furnish documentary evidence of high school, college or university graduation to the employing agency. Documentary evidence of high school graduation consists of diplomas or transcripts from public schools or private schools which meet standards adopted by either the North Carolina Department of Public Instruction, the Division of Non-Public Instruction, or a comparable out of state ~~agency~~ agency; or such documentation as described in Paragraphs (b), (c), (d) and (e) of this Rule. Documentary evidence of college or university graduation consists of diplomas or transcripts from colleges or universities accredited as such by the Department of Education of the state in which the institution is located, an accredited body recognized by either the U.S. Department of Education or Council for Higher Education Accreditation, or the state university of the state in which the institution is located.

(b) High School Diplomas earned through home school programs must be accompanied by a true and accurate or certified transcript and must meet the requirements of Part 3 of Article 39 of Chapter 115C of the North Carolina General Statutes, or a comparable out-of-state statute.

(c) Diplomas earned from ~~High Schools~~ high schools or equivalent institutions outside of the United States must be translated into English and be accompanied by an authentic transcript. Transcripts shall be evaluated to ensure they are scholastically comparable to United States curriculum requirements.

(d) ~~High School~~ school diplomas earned through on-line or correspondence courses shall be evaluated on a case by case basis. Such diplomas must meet state and local requirements for the jurisdiction from which the diploma was issued.

(e) Documentary evidence of having earned a High School Equivalency (HSE) ~~Diploma~~ diploma shall be satisfied by a certified copy of a high school equivalency credential or an adult high school diploma, recognized both of which must be recognized by the U.S. Department of Education, ~~or the state~~ the state Department of Education, ~~in the issuing state or educational agency that is authorized in the state to issue a High School Equivalency (HSE) diploma.~~

(f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's DD214.

History Note: Authority G.S. 17E-4;

Eff. January 1, 1989;

Amended Eff. January 1, 2019; January 1, 2008; August 1, 2000; January 1, 1992; January 1, 1990;

Readopted Eff. August 1, 2019;

Amended Eff. January 1, 2023.

12 NCAC 10B .0303 is proposed to be amended as follows:

12 NCAC 10B .0303 FINGERPRINT CRIMINAL HISTORY RECORDS CHECK

(a) Each applicant for certification shall be fingerprinted. ~~A criminal history records check against State and Federal files will be conducted by both the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI) based on those prints. Upon receipt from the SBI, the Division shall forward a copy of the results of the criminal history records check, to the employing agency which shall be retained in the applicant's personnel file.~~

(b) The employing agency shall forward the applicant's fingerprint record to the North Carolina State Bureau of Investigation for criminal history record check utilizing fingerprints against state and federal files. Certifications issued prior to the receipt by the Division of the fingerprint and criminal history records check of state and federal files, as conducted by the SBI and FBI, are conditional. Such conditional certifications may summarily be suspended by the Commission upon receipt from the SBI or FBI of a fingerprint or criminal history records check that indicates that the officer has been convicted of an offense as specified in 12 NCAC 10B .0307.

(c) The employing agency will receive a report of the results of the criminal history record check against state and federal files. The employing agency shall retain the results of the criminal history records check utilizing fingerprints in compliance with the North Carolina Department of Natural and Cultural Resources Retention Schedule established pursuant to G.S. 121 and G.S. 132. The employing agency shall include the results of the fingerprint criminal history record check with the applications submitted to the Commission. In compliance with 12 NCAC 10B .0404(a)(1), a justice officer shall not be eligible for general certification and shall remain on probationary certification until the requirements of this Rule have been met.

(d) An applicant for certification as a justice officer may not perform any action requiring certification by the Commission prior to the date on which the employing agency receives the report of the result of the criminal history record check unitizing fingerprints.

History Note: Authority G.S. 17E-7;

Eff. January 1, 1989;

Amended Eff. August 1, 2000; January 1, 1993; January 1, 1992;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;

Amended Eff. January 1, 2023.

12 NCAC 10B .0304 is proposed to be amended as follows:

12 NCAC 10B .0304 MEDICAL EXAMINATION

(a) Each applicant for certification or ~~enrollee~~ enrollment in a Commission-certified basic training course shall complete, sign, and date the Commission's Medical History Statement Form (F-1) and shall be examined by either a physician, surgeon, physician's assistant, nurse ~~practitioner, or other licensed independent~~ practitioner who is licensed to practice in North Carolina or who is authorized to practice medicine in accordance with the rules and regulations of the United States Armed Forces to help determine his or her fitness to carry out the physical requirements of the position of justice officer. ~~Effective January 1, 2018, Telecommunicators who have not previously held certification with this Commission, but who have been continuously employed by an entity other than a Sheriff's Office, and who have previously provided a valid Medical History Statement (F-1) and Medical Examination Report (F-2) for admission into a Commission-accredited Telecommunicator Certification Course shall not be required to submit additional F-1 and F-2 forms for the purpose of obtaining certification.~~

(b) Prior to conducting the examination, the physician, surgeon, physician's assistant, or nurse practitioner, or other licensed independent practitioner shall:

- (1) read the "Medical Screening Guidelines Implementation Manual for Certification of Justice Officers" in the State of North Carolina as published by the North Carolina Department of Justice. Copies of this publication may be obtained at no cost ~~by contacting the North Carolina Department of Justice, Sheriffs' Standards Division, PO Box 629, Raleigh, North Carolina 27602; at~~ <https://ncdoj.gov/law-enforcement-training/sheriffs/>;
- (2) read, sign, and date the Medical History Statement Form (F-1); and
- (3) read the ~~F-2A~~ Instructions to Agency and Examiner for Completion of Medical Examination Report Form (F-2A) attached to the Medical Examination Report Form (F-2).

(c) The examining physician, surgeon, physician's assistant, or nurse practitioner, or other licensed independent practitioner shall record the results of the examination on the Medical Examination Report Form (F-2) and shall sign and date the form.

(d) The Medical Examination Report Form (F-2) and the Medical History Statement Form (F-1) shall be valid for one year after the date the examination was conducted and shall be completed prior to:

- (1) the applicant's beginning the Detention Officer Certification Course, the Basic Law Enforcement Training Course, or the Telecommunicator Certification Course; and
- (2) ~~the applicant's applying to the Commission for Certification.~~ the agency submission of application for certification to the Commission.

History Note: Authority G.S. 17E-7;

Eff. January 1, 1989;

Amended Eff. January 1, 1996; January 1, 1993; January 1, 1991; January 1, 1990;

Temporary Amendment Eff. March 1, 1998;

Amended Eff. January 1, 2018; January 1, 2009; August 1, 2002; April 1, 2001; August 1, 1998;

1 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
2 *2018;*
3 *Amended Eff. January 1, 2023.*
4

12 NCAC 10B .0305 is proposed to be amended as follows:

12 NCAC 10B .0305 BACKGROUND INVESTIGATION

~~(a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability for employment and certification, the applicant shall complete the Commission's Personal History Statement (F-3) to provide information regarding his or her former names, education, address(es), family, financial, employment, and military history, as well as any prior criminal or civil charges, actions, or behavior. The information provided on this form shall serve as a basis for the investigation. The Commission mandated Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment. Prior to employment, an agency shall complete a background investigation on all applicants for certification. The investigation shall examine the applicant's character traits and habits relevant to performance as a justice officer and shall determine whether the applicant is of good moral character. This examination includes completion of the Commission's Personal History Statement Form (F-3) and Mandated Background Investigation Form (F-8), ensuring the proper certification and criminal history record check required by each. The Personal History Statement (F-3) and the Mandated Background Investigation (F-8) forms are~~ is available on the Commission's website at <https://ncdoj.gov/law-enforcement-training/sheriffs/all-commission-forms-publications/>.

~~(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of appointment, the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes or a new Personal History Statement (F-3) must be completed.~~

~~(b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form (F-3) to provide a basis for the investigation. The agency shall certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement Form (F-3) and give the applicant the opportunity to update the Personal History Statement Form (F-3) prior to submission to the Division.~~

~~(c) The employing agency shall ensure the properly notarized and dated signatures are affixed to the Personal History Statement (F-3). It shall also certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement (F-3); if not, the employing agency shall provide the applicant the opportunity to update the F-3 prior to submission to the Division. The agency shall utilize an investigator with prior experience or training in conducting background investigations. The investigator shall document the results of the investigation on the Mandated Background Investigation Form (F-8) and shall include in the report of investigation:~~

- ~~(1) biographical data;~~
- ~~(2) family data;~~
- ~~(3) scholastic data;~~
- ~~(4) employment data;~~
- ~~(5) criminal history data;~~
- ~~(6) interviews with the applicant's references; and~~

1 (7) a summary of the investigator's findings and conclusions regarding the applicant's moral character
2 known to the agency or listed on the applicant's Personal History Statement (F-3). This
3 documentation shall be included with all other documentation required in 12 NCAC 10B .0408.

4 ~~(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits displayed in~~
5 ~~his or her performance as a justice officer and shall determine whether the applicant is of good moral character as~~
6 ~~defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-~~
7 ~~mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator. The Background~~
8 ~~Investigation Form (F-8) is available on the Commission's website. The employing agency shall include a signed and~~
9 ~~notarized Release Authorization Form that authorizes the Division staff to obtain documents and records pertaining~~
10 ~~to the applicant for certification that may be required in order to determine whether certification may be granted.~~

11 ~~(e) The Background Investigation Form (F-8) shall include records checks from:~~

12 (1) ~~a Statewide search of the Administrative Office of the Courts (AOC) computerized system;~~
13 (2) ~~the national criminal record database accessible through the Division of Criminal Information (DCI)~~
14 ~~network;~~
15 (3) ~~the North Carolina Division of Motor Vehicles, if the applicant has ever possessed a driver's license~~
16 ~~issued in North Carolina; and~~
17 (4) ~~out of state motor vehicles check obtained through the Division of Criminal Information or obtained~~
18 ~~through the any other state's Division of Motor Vehicles if the applicant held a license in that state(s)~~
19 ~~within the 10 year period prior to the date of appointment.~~

20 ~~(f) The background investigation must also include records checks from jurisdictions where the applicant resided~~
21 ~~within the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:~~

22 (1) ~~Where the applicant resided in jurisdictions in North Carolina, Clerk of Court records checks shall~~
23 ~~be acceptable;~~
24 (2) ~~Where the applicant resided in another country, an Interpol records check shall be acceptable~~
25 ~~provided the country is a member of Interpol; or if the applicant was in the United States military,~~
26 ~~a military records check shall be acceptable; or if neither, efforts shall be made and documented to~~
27 ~~attempt to obtain a records check from the country and submitted if available; and~~
28 (3) ~~Where the applicant resided in a state other than North Carolina, a records check through the~~
29 ~~Division of Criminal Information using the Out of State Computer Name Query (IQ) shall be~~
30 ~~acceptable provided the state will respond to that type of inquiry. If not, then either a records check~~
31 ~~response from both the municipality, city, or town where the applicant resided and the county wide~~
32 ~~Sheriff's Office or Police Department obtained through traditional correspondence, or a records~~
33 ~~check from the appropriate county wide or state wide record holding agency shall be acceptable.~~

34 ~~(g) If the applicant had prior military service, the Background Investigation must also include a copy of the applicant's~~
35 ~~DD214 that shows the characterization of discharge for each discharge that occurred and military discipline received,~~
36 ~~if any. If the DD214 indicates a discharge characterization of any type other than Honorable, then a military records~~
37 ~~check shall also be required.~~

1 ~~(h) All records checks shall be performed on each name by which the applicant for certification has ever been known~~
2 ~~since the age of 12. If the applicant has had an official name change that occurred after the applicant had reached the~~
3 ~~age of 12 years of age, then the name change shall be documented.~~

4 ~~(i) The employing agency shall forward to the Division certified copies of any criminal charge(s) and disposition(s)~~
5 ~~known to the agency or listed on the applicant's Personal History Statement (F-3). The employing agency shall explain~~
6 ~~any charges or other violations that may result from the records checks required in Paragraph (e) of this Section that~~
7 ~~do not pertain to the applicant for certification. This documentation shall be included with all other documentation~~
8 ~~required in 12 NCAC 10B .0408.~~

9 ~~(j) The employing agency shall include a signed and notarized Release Authorization Form that authorizes the~~
10 ~~Division staff to obtain documents and records pertaining to the applicant for certification that may be required in~~
11 ~~order to determine whether certification may be granted.~~

12 ~~(k)(e)~~ The employing agency shall provide the results of a completed and processed form AOC-CR-280, Law
13 Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-145.8A
14 or 15A-146, for each applicant presented for certification. The AOC-CR-280 form is available on the Commission's
15 website.

16
17 *History Note: Authority G.S. 17E-7;*
18 *Eff. January 1, 1989;*
19 *Amended Eff. January 1, 2010; January 1, 2009; January 1, 2007; August 1, 2002; January 1, 1994;*
20 *January 1, 1993; January 1, 1992; January 1, 1990;*
21 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
22 *2018;*
23 *Amended Eff. January 1, 2023;*

1 **12 NCAC 10B .0306 is proposed to be amended as follows:**

2 **12 NCAC 10B .0306 EMPLOYMENT INTERVIEW**

3 (a) Prior to employment, the employing agency shall conduct an interview of the applicant to determine the applicant's
4 abilities and potential for success as a justice officer.

5 (b) The sheriff or agency head may conduct the interview ~~personally, or he may delegate~~ personally or by delegating
6 the responsibility to a qualified staff member or panel.

7
8 *History Note: Authority G.S. 17E-7;*

9 *Eff. January 1, 1989;*

10 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
11 *2018;*

12 *Amended Eff. January 1, 2023.*

13

14

12 NCAC 10B .0307 is proposed to be amended as follows:

12 NCAC 10B .0307 CRIMINAL HISTORY RECORD

(a) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified in North Carolina shall not have committed or been convicted by a local, state, federal or military court of:

(1) a felony; ~~or~~

(2) a crime for which the punishment could have been imprisonment for more than two ~~years.~~ years;

~~(b) Consistent with and subject to the requirements of 12 NCAC 10B .0204, every justice officer employed or certified in North Carolina should not have committed or been convicted by a local, state, federal or military court of:~~

~~(3)~~ a crime or unlawful act defined as a "Class B Misdemeanor" and which occurred after the date of appointment;

~~(4)~~ a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the date of appointment; or

~~(5)~~ four or more crimes or unlawful acts defined as "Class B Misdemeanors" regardless of the date of conviction or commission; or

~~(6)~~ four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the applicant can be employed if the last conviction or commission occurred more than two years prior to the date of appointment; or

~~(7)~~ a combination of four or more "Class A or B Misdemeanors" regardless of the date.

~~(8)~~ for personnel who carry a firearm in the execution of their duties, an offense that, pursuant to 18 USC 922 (g)(8), would prohibit the possession of a firearm or ammunition.

~~(b)~~ The requirements of this Rule shall be applicable at all times during which the officer is certified by the Commission and shall also apply to all applications for certification.

History Note: Authority G.S. 17E-7;

Eff. January 1, 1989;

Amended Eff. August 1, 2002; January 1, 1996; January 1, 1993; January 1, 1992; January 1, 1991;

Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;

Amended Eff. January 1, 2023.

1 12NCAC 10B .0410 is proposed to be amended as follows:

2
3 **12 NCAC 10B .0410 AGENCY REPORTING OF DRUG SCREENING RESULTS**

4
5 (a) Every justice officer shall be examined and certified by a licensed surgeon, physician, physician assistant, nurse
6 practitioner or other licensed independent practitioner to meet physical requirements necessary to fulfill the officer's
7 particular responsibilities and shall have produced a negative result on a drug screen administered according to the
8 following specifications:

9 (a) the drug screen shall be a urine test consisting of an initial screening test using an
10 immunoassay method and a confirmatory test on an initial positive result using a gas
11 chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests
12 authorized or mandated by the Department of Health and Human Services for Federal
13 Workplace Drug Testing Programs;

14 (b) a chain of custody shall be maintained on the specimen from collection to the eventual
15 discarding of the specimen;

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

18 (d) the test threshold values meet the requirements established by the Department of Health
19 and Human Services for Federal Workplace Drug Testing Programs, as found in 82 FR
20 7920 (2017) incorporated by reference, including later amendments and editions found at
21 no cost at [https://www.federalregister.gov/documents/2017/01/23/2017-](https://www.federalregister.gov/documents/2017/01/23/2017-00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs)
22 00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs;

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

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

28 ~~(a)(b)~~ Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports
29 telecommunicators to the Commission for certification, shall report in writing to the Division all refusals and all
30 positive results of drug screening obtained from applicants and lateral transfers pursuant to 12 NCAC 10B .0301(6)
31 unless transfers. If the positive result has been explained to the satisfaction of the agency's medical review officer
32 officer, who shall be a licensed physician, physician, the positive results are not required to be reported.

33 ~~(b)(c)~~ Each agency that is required to report individuals to the Commission for certification, or that voluntarily reports
34 telecommunicators to the Commission for certification, and that conducts a drug screen for in-service officers, shall
35 report in writing positive results or refusals to submit to an in-service drug screening to the Sheriffs' Standards
36 Division within 30 days of the positive result or refusal, unless the positive result has been explained to the satisfaction
37 of the agency's medical review officer, who shall be a licensed physician to the extent the drug screen conducted

1 ~~conforms to the specifications of~~ ~~provided the drug screen conducted conforms to~~ 12 NCAC 10B ~~0410.0301(6)(a),~~
2 ~~(b), (c), (d) and (f).~~
3 ~~(e)(d)~~ For reporting purposes, a result ~~will be~~ is considered "positive" only in the cases where the drug screen reveals
4 the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department
5 of Health and Human Services for Federal Workplace Drug Testing Programs and adopted by reference in 12 NCAC
6 10B .0410. ~~0301(6).~~

7
8 *History Note: Authority G.S. 17E-4; 17E-7;*
9 *Eff. July 1, 1990;*
10 *Recodified from 12 NCAC 10B .0409 Eff. January 1, 1991;*
11 *Amended Eff. January 1, 2013;*
12 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
13 *2018.*
14 *Amended Eff. January 1, 2023.*

Burgos, Alexander N

Subject: FW: [External] RE: CJETS Request for Changes - August 2022 RRC

From: Squires, Richard <RSQUIRES@ncdoj.gov>

Sent: Wednesday, August 3, 2022 11:23 AM

To: Dismukes, Leslie <ldismukes@ncdoj.gov>; Liebman, Brian R <brian.liebman@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>; Jones, Sirena C <scjones@ncdoj.gov>

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

Subject: RE: [External] RE: CJETS Request for Changes - August 2022 RRC

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Sirena,

Can you provide the rules for Brian.

Richard



Richard Squires
Director
Sheriffs' Standards Division
(919) 662-4375 (Office)
(919) 779-8213 (Main)
(919) 662-4515 (fax)
rsquires@ncdoj.gov
1700 Tryon Park Drive
Raleigh, North Carolina 27610
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From: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>

Sent: Wednesday, August 3, 2022 11:13 AM

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 <RSQUIRES@ncdoj.gov>

Subject: RE: [External] RE: CJETS Request for Changes - August 2022 RRC

Hi Brian, I'm copying Director Squires so that he can provide you with the versions of the rule that went to the RRC. We completed them both at the same time, but because the meeting schedules of the two Commissions differ we are likely on different timetables for RRC approval.

Thanks,
Leslie

From: Liebman, Brian R <brian.liebman@oah.nc.gov>
Sent: Tuesday, August 2, 2022 5:11 PM
To: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <alexander.burgos@oah.nc.gov>
Subject: RE: [External] RE: CJETS Request for Changes - August 2022 RRC

Hi all,

Would someone be willing to point me in the direction of which Sheriff's rules the CJETS rules need to mirror?

Thanks!
Brian

Brian Liebman
Counsel to the North Carolina Rules Review Commission
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brian.liebman@oah.nc.gov

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From: Liebman, Brian R
Sent: Thursday, July 28, 2022 3:13 PM
To: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Schilling, Michelle
Cc: Burgos, Alexander N <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

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From: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>
Sent: Thursday, July 28, 2022 1:30 PM
To: Liebman, Brian R <brian.liebman@oah.nc.gov>; Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Burgos, Alexander N <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>
Sent: Thursday, July 28, 2022 1:10 PM
To: Schilling, Michelle <mschilling@ncdoj.gov>
Cc: Cooley Dismukes, Leslie <LDismukes@ncdoj.gov>; Burgos, Alexander N <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
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