

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: All Submission for Permanent Rule Forms.

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In each Form, in item 3 the box for "Adoption" is checked, despite each rule being an Amendment. Please resubmit each form with "Amendment" checked instead.*

*Also, in several Forms you specify in Item 9B that the reason for rulemaking was to comply with SB 300, yet have checked "Agency" rather than "Legislation enacted by the General Assembly" in item 9A. Please correct where appropriate and cite the Session Law in the space provided.*

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

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0205

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In your introductory statement, line 1, please correct "adoption" to "amendment."*

*In your title, line 3, are the colons between "suspension", "revocation", and "or denial" grammatically appropriate? I would think these should be commas or semicolons.*

*In (1)(c), line 11, the rule refers to a "five-year period of revocation, suspension, or denial as set out in Item (2)", however, Item (2) refers to a period of "not less than five years," which indicates that the suspension can be longer than five years. I suggest either deleting "five-year" on line 11, or changing to "at least a five-year period..."*

*In (2)(b), line 15, clarify what "material misrepresentation" is and the bases used for determination.*

*In (2)(c) and (2)(d), lines 18 and 22 respectively, clarify what "designedly" is and the bases used for determination. Is this a legal standard akin to "deliberately"?*

*In (2)(c) and (d), lines 19 and 23, respectively, please delete "whatsoever".*

*In (2)(d), line 27, add a space between "or" and ".2100."*

*In (2)(e), line 29, the citation here must be changed to 12 NCAC 10B .0301(a)(13).*

*With respect to (2)(g), I am curious why these three grounds for sanctions—(1) failing a drug test, (2) refusing to submit to a drug test required by SETSC or CJETS rules, or (3) refusal to submit for a drug test by the employer—are not broken out separately. At the very least I would recommend breaking out the first ground—failing a test—from the other two—refusing to take a test.*

*If you choose to keep (2)(g) as is, please delete the first "or" on line 32, and add an oxford comma following "Commission" on line 34.*

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022

*Place an Oxford comma after “suspension” on page 2, lines 2 and 16, respectively.*

*On page 2, line 3, please clarify what “extenuating circumstances” are and what bases are used for such determination.*

*In (3)(a) and (b), lines 7 and 8, please clarify the references to “relevant basic training requirements” and “minimum standards of employment or certification”, respectively.*

*On line 14, please add an Oxford comma following “denial”.*

*On line 15, what is meant by “the Subparagraphs set out in 12 NCAC 10B .0204(d)”?  
Do you just mean “where the revocation, denial, or suspension of certification is based upon 12 NCAC 10B .0204(d)”?*

*In your History Note, please cite to G.S. 17E-9.*

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

1 12NCAC 10B .0205 is proposed for adoption as published in 37:01 16-17 as follows:

2

3 **12 NCAC 10B .0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL**

4 When the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall  
5 be:

6 (1) permanent where the cause of sanction is:

7 (a) commission or conviction of a felony;

8 (b) commission or conviction of a crime for which authorized punishment included  
9 imprisonment for more than two years; or

10 (c) the second revocation, suspension, or denial of an officer's certification for any of the  
11 causes requiring a five-year period of revocation, suspension, or denial as set out in Item  
12 (2) of this Rule.

13 (2) not less than five years where the cause of sanction is:

14 (a) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(1);

15 (b) material misrepresentation of any information required for certification or accreditation  
16 from the Commission or the North Carolina Criminal Justice Education and Training  
17 Standards Commission;

18 (c) knowingly and designedly by any means of false pretense, deception, fraud,  
19 misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training  
20 or certification from the Commission or the North Carolina Criminal Justice Education and  
21 Training Standards Commission;

22 (d) knowingly and designedly by any means of false pretense, deception, fraud,  
23 misrepresentation or cheating whatsoever, aiding another in obtaining or attempting to  
24 obtain credit, training, or certification from the Commission or the North Carolina Criminal  
25 Justice Education and Training Standards Commission. This Sub-Item also applies to  
26 obtaining or attempting to obtain credit for in-service training as required by 12 NCAC  
27 10B .1700, .1800, .2000, or.2100;

28 (e) failure to make either of the notifications as required by ~~12 NCAC 10B .0301(a)(7)~~; 12  
29 NCAC 10B .0301(13)

30 (f) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230;  
31 or

32 (g) a positive result on a drug screen, or a refusal to submit to drug testing as required by the  
33 rules in this Chapter or the rules of the Criminal Justice Education and Training Standards  
34 Commission or has refused to submit to an in-service drug screen pursuant to the guidelines  
35 set forth in the Drug Screening Implementation Guide as required by the employing agency  
36 through which the officer is certified.

1 The Commission may either reduce or suspend the periods of sanction under this Item or substitute a period of  
2 probation in lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or  
3 suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the  
4 administrative hearing warrant such a reduction or suspension.

5 (3) for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment  
6 continues to exist, where the cause of sanction is:

- 7 (a) failure to meet or satisfy relevant basic training requirements;
- 8 (b) failure to meet or maintain the minimum standards of employment or certification;
- 9 (c) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC  
10 10B .2000 or .2100 or 12 NCAC 09E .0100;
- 11 (d) commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2), (3), (4)  
12 and (5); or
- 13 (e) denial, suspension, or revocation of certification pursuant to 12 NCAC 10B .0204(c)(5).

14 The Commission may either reduce or suspend the periods of sanction where revocation, denial or suspension of  
15 certification is based upon the Subparagraphs set out in 12 NCAC 10B .0204(d) or substitute a period of probation in  
16 lieu of revocation, suspension or denial following an administrative hearing. This authority to reduce or suspend the  
17 period of sanction may be utilized by the Commission when extenuating circumstances brought out at the  
18 administrative hearing warrant such a reduction or suspension.

19  
20 *History Note: Authority G.S. 17E-4; 17E-7;*  
21 *Eff. January 1, 1991;*  
22 *Recodified from 12 NCAC 10B .0208 Eff. January 1, 1992;*  
23 *Amended Eff. January 1, 2013; January 1, 2009; January 1, 2008; January 1, 2007; January 1,*  
24 *2006; March 1, 2005; January 1, 1995; January 1, 1994; January 1, 1993; January 1, 1992;*  
25 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
26 *2018;*  
27 *Amended Eff. January 1, 2023.*

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0301

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Generally, if you do not have a paragraph (b), per our style guide, you should not have a paragraph (a). However, consider making subparagraph (14) a new paragraph, (b), because the contents of this subparagraph are not substantively in line with requirements of (a). This would thereby keep paragraph (a) intact.*

*In (a)(2), line 6, I believe you need to change "and" to "or" as someone cannot be both 20 and 18 years of age at the same time.*

*Also in (a)(2), line 7, what is the change being made with respect to "telecommunicators;"?*

*In (a)(4), line 9, it appears that there are either extraneous words, or "agency" was unintentionally deleted. Please revise.*

*In (a)(11), p.2, line 36, please delete or define "satisfactorily".*

*In (a)(11), p.3, lines 2-3, please consider changing "using the" to "using any", then removing the parentheses around "handgun(s)" and "weapons(s)".*

*Regardless of whether you choose to revise (a)(11) as recommended, omit the parentheses around "handgun(s)," and particularly around "weapons(s)," as the latter is a typo.*

*In (a)(12), please conform the citations to Bluebook formatting. Italicize all case names, and italicize "appeal dismissed" on lines 5-6. Place the cases in reverse chronological order, and capitalize "In" in "in re" on line 7. (I am sorry for the three "in"s in a row!)*

*Also, in (a)(12), line 9, please delete "and later court decisions." If there are court decisions defining "good moral character" that came after 1983, please cite them. Otherwise, this language is entirely too vague, as it is unclear what decisions you're referring to.*

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022

*In (a)(13), p.3, lines 11, 16, 21, 28, and 31, please correct the formatting of the Part letters from “(a)” to “(A)” and so on through (f).*

*In (a)(13)(a) and (b), please incorporate by reference and provide where the “Class B Misdemeanor Manual” can be accessed.*

*Also in (a)(13)(a) and (b), lines 11 and 16, respectively, can you define what a “qualifying event” is?*

*In (a)(13)(c), line 21, did you mean to omit the agency head from those who the officer must notify of a Domestic Violence Protective Order or Civil No Contact Order?*

*In (a)(13)(c), revise the sentence to clarify what needs to be reported and avoid ambiguity with plurals. Remove the “s” from the second “Orders” on page 2, line 22 and change “of all” to “of any” in line 21.*

*Also, on page 3, line 22, remove the parentheticals for the General Statutes. Use the format “pursuant to G.S...”.*

*In (a)(13)(d), line 24, please define what you mean by “disposed of”. Do you mean a final adjudication?*

*Also in (a)(13)(d), lines 26-27, I’m a bit confused by what you’re requiring. The rule states that the agency head shall notify the Standards Division of “arrests or criminal charges and final disposition” within five business days of the date of the disposition. Am I reading this correctly that the agency head can wait until 5 business days after the final disposition to inform the Standards Division of an arrest or a charge?*

*Similarly, in (a)(13)(e), change “all” to “any” and change the formatting of the parentheticals.*

*In History Note, delete the extra line, p.4, line 13.*

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

1 12NCAC 10B .0301 is amended WITH CHANGES as published in 37:01 NCR 17-19 as follows:

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

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

- 5 (1) be a citizen of the United States;
- 6 (2) be ~~21~~ at least 20 years of age ~~for all deputies and detention officers and [and be at least 18 years of~~  
7 ~~age for all telecommunicators; telecommunicators;]~~
- 8 (3) be a high school graduate, or the equivalent ~~(GED); as defined in 12 NCAC 10B .0302;~~
- 9 (4) have been fingerprinted by the employing ~~agency; in the manner provided in 12 NCAC 10B .0303;~~
- 10 (5) have had a medical examination as required by 12 NCAC 10B .0304;
- 11 (6) have produced a negative result on a drug screen ~~administered according to the following~~  
12 ~~specifications; as described in 12 NCAC 10B .0410;~~
  - 13 (A) ~~the drug screen shall be a urine test consisting of an initial screening test using an~~  
14 ~~immunoassay method and a confirmatory test on an initial positive result using a gas~~  
15 ~~chromatography/mass spectrometry (GC/MS) or other initial and confirmatory tests as may~~  
16 ~~be authorized or mandated by the Department of Health and Human Services for Federal~~  
17 ~~Workplace Drug Testing Programs [https://www.samhsa.gov/workplace];~~
  - 18 (B) ~~a chain of custody shall be maintained on the specimen from collection to the eventual~~  
19 ~~discarding of the specimen;~~
  - 20 (C) ~~the drugs whose use shall be tested for shall include cannabis, cocaine, phenylclidine~~  
21 ~~(PCP), opiates, and amphetamines or their metabolites;~~
  - 22 (D) ~~the test threshold values established by the Department of Health and Human Services for~~  
23 ~~Federal Workplace Drug Testing Programs are incorporated by reference, including~~  
24 ~~subsequent amendments and editions. Copies of this information may be obtained from the~~  
25 ~~National Institute on Drug Abuse, 5600 Fisher Lane, Rockville, Maryland 20857~~  
26 ~~[http://www.drugabuse.gov/] at no cost;~~
  - 27 (E) ~~the test results shall be dated no more than 60 days before employment or appointment,~~  
28 ~~whichever is earlier;~~
  - 29 (F) ~~the laboratory conducting the test shall be certified for federal workplace drug testing~~  
30 ~~programs, and shall adhere to applicable federal rules, regulations, and guidelines~~  
31 ~~pertaining to the handling, testing, storage, and preservation of samples; and~~
  - 32 (G) ~~each drug test laboratory report shall be reviewed by a medical review officer (MRO), who~~  
33 ~~shall be a licensed physician;~~
- 34 (7) ~~make the following notifications:~~
  - 35 (A) ~~within five business days, notify the Standards Division and the appointing department~~  
36 ~~head in writing of all criminal offenses with which the officer is charged. This shall include~~  
37 ~~all criminal offenses except minor traffic offenses. A minor traffic offense means any~~



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

1 10B .2103 and .2104. Such firearms training compliance must have occurred prior to submission of  
2 the application for appointment to the Commission and must be completed using the agency  
3 approved service handgun(s) and any other weapons(s) that the applicant has been issued or  
4 authorized to use by the agency;

5 (12) be of good moral character as defined in: In re Willis, 288 N.C. 1, 215 S.E.2d 771 (1975), appeal  
6 dismissed 423 U.S. 976 (1975); State v. Harris, 216 N.C. 746, 6 S.E.2d 854 (1940); In re Legg, 325  
7 N.C. 658, 386 S.E.2d 174 (1989); in re Applicants for License, 143 N.C. 1, 55 S.E. 635 (1906); In  
8 re Dillingham, 188 N.C. 162, 124 S.E. 130 (1924); State v. Benbow, 309 N.C. 538, 308 S.E.2d 647  
9 (1983); and later court decisions.

10 (13) make the following notifications:

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

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

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

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

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

31 (f) The required notifications in this Rule shall be in writing and shall specify the nature of the  
32 offense or order, the court in which the case was handled, the date of the arrest, criminal  
33 charge, or service of the order, and the final disposition. The notification shall include a  
34 certified copy of the order or court documentation and final disposition from the Clerk of  
35 Court in the county of adjudication. The requirements of this Item shall be applicable at all  
36 times during which the officer is employed and certified by the Commission and shall also  
37 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.*

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0302

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

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The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 4, please put "Justice Officer" in lowercase to be consistent with the rest of this rules package.*

*In (a), line 6, please delete "either."*

*In (a), line 7, what is a "comparable" out-of-state agency"?*

*In (a) and (e), lowercase "Department of Education" since the agency is not referring specifically to a proper noun. This can cause ambiguity if a state's comparable department is not specifically referred to as such.*

*In (d), what is the agency's authority to evaluate whether a diploma met state or local requirements? Would this not be left up to the jurisdiction which issued the diploma?*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022

1 12 NCAC 10B .0302 is amended with changes as published in 37:01 NCR 19 as follows:

2

3 **12 NCAC 10B .0302 DOCUMENTATION OF EDUCATIONAL REQUIREMENT**

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

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

16 (c) Diplomas earned from ~~High Schools~~ high schools or equivalent institutions outside of the United States must be  
17 translated into English and be accompanied by an authentic transcript. The Division's staff shall evaluate the  
18 transcripts ~~Transcripts shall be evaluated~~ to ensure they are scholastically comparable to United States curriculum  
19 requirements.

20 (d) The Division's staff shall evaluate high ~~High~~ School school diplomas earned through on-line or correspondence  
21 courses ~~shall be evaluated~~ on a case by case basis. Such diplomas must meet state and local requirements for the  
22 jurisdiction from which the diploma was issued.

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

27 (f) Documentary evidence of the attainment of satisfactory scores on any military high school equivalency  
28 examination is acceptable as evidence of high school graduation if verified by a true copy of the veteran's ~~DD214.~~  
29 DD214. Certificate of Release from Active Duty.

30

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

32 *Eff. January 1, 1989;*

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

34 *Readopted Eff. August 1, 2019;*

35 *Amended Eff. January 1, 2023.*

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0303

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

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In reviewing this Rule, the staff recommends the following changes be made:

*In (a), what is the procedure for submitting fingerprints via SAFIS? Is there reference to such procedures which can be made or incorporated?*

*What is being required in the first sentence of (c)? Alternatively, from whom will the employing agency receive the report from?*

*In (d), line 22, I don't understand the reference to 12 NCAC 10B .0301. Please clarify.*

*Also in (d), line 23, what are the actions that require certification? Please specify in the Rule.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022

1 12 NCAC 10B .0303 is amended with changes as published in 37:01 NCR 19-20 as follows:

2

3 **12 NCAC 10B .0303 FINGERPRINT CRIMINAL HISTORY RECORDS CHECK**

4 (a) Each applicant for certification shall submit electronic fingerprints in the Statewide Automated Fingerprint  
5 Identification System (SAFIS), be fingerprinted. A criminal history records check against State and Federal files will  
6 be conducted by both the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI) based on  
7 those prints. Upon receipt from the SBI, the Division shall forward a copy of the results of the criminal history records  
8 check, ~~to the employing agency which shall be retained in the applicant's personnel file.~~

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

15 (c) The employing agency will receive a report of the results of the criminal history record check utilizing fingerprints  
16 against state and federal files. The employing agency shall retain the results of the criminal history records check  
17 utilizing fingerprints in compliance with the North Carolina Department of Natural and Cultural Resources Retention  
18 Schedule established pursuant to G.S. [121] 121-4 and G.S. [132] 132-8.1. The employing agency shall include the  
19 results of the fingerprint criminal history record check with the applications submitted to the Commission. ~~In~~  
20 ~~compliance with 12 NCAC 10B .0404(a)(1), a justice officer shall not be eligible for general certification and shall~~  
21 ~~remain on probationary certification until the requirements of this Rule have been met.~~

22 (d) Pursuant to 12 NCAC 10B .0301, an [An] applicant for certification as a justice officer may not perform any  
23 action requiring certification by the Commission prior to the date on which the employing agency receives the report  
24 of the result of the criminal history record check unitizing fingerprints.

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

27 *Eff. January 1, 1989;*

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

29 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
30 *2018;*

31 *Amended Eff. January 1, 2023.*

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0304

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Generally to the Rule, with respect to the references to the F-1 and F-2 forms, are the contents or substantive requirements of these forms described in another Rule or in a statute? Otherwise, the forms themselves are subject to rulemaking. Please see G.S. 150B-2(8a)d.*

*In (a), lines 6 and 7, add commas following "practitioner," and "North Carolina".*

*In (a), line 8, please revise "U.S. Code" to "U.S.C."*

*In (a), line 9, what is the agency referring to when referencing the "physical requirements"? Are these physical requirements formalized in another Rule, in a written job description, or anywhere else?*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022



1 12 NCAC 10B .0304 is amended with changes as published in 37:01 NCR 20 as follows:

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**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, or 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, as outlined in 10 U.S. Code § 1094, 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, Sheriff's 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)~~ 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;*

1 *Amended Eff. January 1, 2018; January 1, 2009; August 1, 2002; April 1, 2001; August 1, 1998;*  
2 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
3 *2018;*  
4 *Amended Eff. January 1, 2023.*

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0305

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Generally to the Rule, with respect to the references to the F-3 and F-8 forms, as well as the Release Authorization Form in paragraph (d), and the AOC-CR-280 in paragraph (e), are the contents or substantive requirements of these forms described in another Rule or in a statute? Otherwise, the forms themselves are subject to rulemaking. Please see G.S. 150B-2(8a)d.*

*Also, generally to the Rule, when changes are made to a rule after publication, the changes need to be highlighted. This was the only rule this was not done.*

*In (a), line 12, is the definition of "good moral character" the same as in .0301(a)(12)? If so, please add a cross-reference.*

*In (a), line 12, the use of the term "includes" indicates that there are other requirements beyond what is mentioned in the Rule. Please specify what else the examination should include, or revise accordingly.*

*In (c), lines 27-28, what type of "prior experience or training" is required for an investigator to conduct background investigations?*

*In (d), line 8, by whom should the Form be signed?*

*Also in (d), line 10, what documents and records are required?*

*Also in (e), line 12, what do you mean by "processed"?*

*In (e), line, 15, provide to the link to the website referenced.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022

1 12NCAC 10B .0305 is amended **WITH CHANGES** as published in 37:01 NCR 20-21 as follows:

2  
3 **12 NCAC 10B .0305 BACKGROUND INVESTIGATION**

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

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

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

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

- 31 ~~(1) biographical data;~~
- 32 ~~(2) family data;~~
- 33 ~~(3) scholastic data;~~
- 34 ~~(4) employment data;~~
- 35 ~~(5) criminal history data;~~
- 36 ~~(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 **to the Division staff** the results of a completed and processed form AOC-  
13 CR-280, Law Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6,  
14 15A-145.8A or 15A-146, for each applicant presented for certification. The AOC-CR-280 form is available on the  
15 Commission's 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;*

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0306

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), what does "abilities and potential for success" mean? G.S. 17E-7 refers to "competence and reliability of persons to assume and discharge the responsibilities of the office." Is this what is meant? If so, use the statutory language.*

*In (b), line 7. what is the standard used to determine competency? This seems impermissibly vague.*

*Also, in (b), line 9, add an end quotation mark after "qualified".*

*Is there statutory authority for the delegation language on lines 6-9? Does the Commission have the authority to define the powers of the sheriff or an agency head?*

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

1 12 NCAC 10B .0306 is amended with changes as published in as published in 37:01 NCR 21-22 as follows:

2

3 **12 NCAC 10B .0306 EMPLOYMENT INTERVIEW**

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

6 (b) The sheriff or agency head may conduct the interview ~~personally, or he may delegate~~ personally or by delegating  
7 the responsibility to a qualified staff member or ~~panel.~~ panel, who is competent, whether by education, training, or  
8 experience, to conduct the employment interview. The respective agency head identifies those individuals he or she  
9 deems "qualified."

10

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

12 *Eff. January 1, 1989;*

13 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
14 *2018;*

15 *Amended Eff. January 1, 2023.*

16

17



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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0307

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 5, insert an Oxford comma after "federal".*

*Under (a), create a proper list by deleting each "or" at the end of each item, deleting the period at the end of item (7), and inserting a semi-colon followed by "or" at the end of (7) on line 19.*

*Paragraph (b) looks to be a restatement of the definition referenced in 12 NCAC 10B .0103(16). Please delete, as R. .0103 already makes it clear that the definition applies here.*

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

Brian Liebman  
Commission Counsel  
Date submitted to agency: September 30, 2022

1 12 NCAC 10B .0307 is amended with changes as published in 37:01 NCR 22 as follows:

2

3 **12 NCAC 10B .0307 CRIMINAL HISTORY RECORD**

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

6 (1) a felony; ~~or~~

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

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

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

12 ~~(4)~~(4) a crime or unlawful act defined as a "Class B Misdemeanor" within the five year period prior to the  
13 date of appointment; or

14 ~~(5)~~(5) four or more crimes or unlawful acts defined as "Class B Misdemeanors" regardless of the date of  
15 conviction or commission; or

16 ~~(6)~~(6) four or more crimes or unlawful acts defined as "Class A Misdemeanors" except the applicant can  
17 be employed if the last conviction or commission occurred more than two years prior to the date of  
18 appointment; or

19 ~~(7)~~(7) a combination of four or more "Class A or B Misdemeanors" regardless of the date.

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

22 (b) 12 NCAC 10B .0103(16) defines "Commission" as a finding by the North Carolina Sheriffs' Education and  
23 Training Standards Commission or an administrative body, pursuant to the provisions of G.S. 150B, that a person  
24 performed the acts necessary to satisfy the elements of a specified criminal offense.

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

27

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

29 *Eff. January 1, 1989;*

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

31 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,  
32 2018;*

33 *Amended Eff. January 1, 2023.*

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0408

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Generally to the Rule, with respect to the references to the various forms, are the contents or substantive requirements of these forms described in another Rule or in a statute? Otherwise, the forms themselves are subject to rulemaking. Please see G.S. 150B-2(8a)d.*

*In (a)(1) and (8), lines 6 and 15, respectively, what do you mean by "verification"? Please specify what you're requesting from the employing agency.*

*In (a)(7), line 14, if you decide to keep (a) in R. 0301, please change the citation here to 12 NCAC 10B .0301(a)(6).*

*In (b)(2), line 21, what is the definition of "break in service"? Does this include leave, other voluntary or involuntary employment matters, or payroll attachment requirement? Please specify.*

*In (c)(1) and (2), begin the sentence with lowercase letters.*

*In (c)(2), line 33, remove the parentheses from "if available" and incorporate the material into the body of the rule.*

*Also in (c)(2), line 33, I'm not sure I understand what you're requiring. What is a "certified" records check? Also, when you say "county-wide" do you mean the county that the applicant resided in? Please clarify.*

*In (d), line 35-36, add commas around "who shall initial and date all changes".*

*In (e), p.2, line 2, remove the comma after "(F-8)".*

*In (f), line 5, the use of the term "include" indicates that there are other requirements beyond what is mentioned in the Rule. Please specify what else the form should include, or revise accordingly.*

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022

*In (f)(4), line 11, add “an” prior to “out-of-state”.*

*In (f)(4), line 13, consider the following change: “...obtained through ~~the other~~ another state’s ~~Division of Motor Vehicles if the applicant held a license~~ division of motor vehicles for any state in which the applicant held a license within the 10 year period prior to the date of appointment.”*

*In (g)(1), (2), and (3), begin the sentence with lowercase letters.*

*In (g)(2), line 20, what “efforts” must be made and documented? Who shall make such efforts? How must they be documented? Please clarify.*

*In (g)(3), line 24, what “type of inquiry” is being referred to?*

*In (g)(3), line 26, what is “traditional correspondence”? Please define.*

*In (g)(3), line 27, define or delete “appropriate.”*

*In (i), line 34, how shall the name change be documented? Please specify.*

*In (j), line 35, remove the parentheses and ending “s” from “charge(s)” and “disposition(s)”.*

*In (j), what are you requiring? What “charges or other violations” would result from a records check but not pertain to the applicant? How would the agency “explain” those charges, and what is a satisfactory explanation?*

*In (k), what specifically is being required? If a confidentiality law covers such information, then this paragraph is unnecessary and provides no additional requirement. Also, by using “all... laws governing confidentiality”, the agency is being overly broad and may encompass laws which are not pertinent.*

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

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022

1 12NCAC 10B .0408 is amended **WITH CHANGES** as published in 37:01 NCR 22-23 as follows:

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3 **12 NCAC 10B .0408 VERIFICATION OF RECORDS TO DIVISION**

4 (a) Prior to issuing certification of each justice officer, for the purpose of verifying compliance with these Rules, the  
5 employing agency shall submit to the Division, along with the Report of Appointment (F-4), the following documents:

- 6 (1) verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC  
7 10B .0302(a);
- 8 (2) certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- 9 (3) the applicant's Medical History Statement (F-1);
- 10 (4) the applicant's Medical Examination Report (F-2 and F-2A);
- 11 (5) the applicant's notarized Personal History Statement (F-3);
- 12 (6) the Commission-mandated Background Investigation Form (F-8) with all accompanying  
13 documentation set out in 12 NCAC 10B .0305;
- 14 (7) documentation of negative results on a drug screen pursuant to 12 NCAC 10B .0301(6); and
- 15 (8) verification of the applicant's compliance with the probationary certification requirements pursuant  
16 to 12 NCAC 10B .0403(b), if the applicant is a deputy sheriff or a detention officer.

17 (b) Compliance with this Rule is waived, with the exception of the requirements of 12 NCAC 10B .0408(a)(8), for  
18 officers applying for dual certification as defined in 12 NCAC 10B .0103(12) provided that:

- 19 (1) the officer holds a valid certification as either a deputy sheriff, detention officer, or  
20 telecommunicator with the employing agency requesting dual certification; and
- 21 (2) the officer has not had a break in service since initial certification with the employing agency  
22 requesting dual certification.

23 (c) Where the Division has previously received a complete Background Investigation Form (F-8) with all  
24 accompanying documentation set out in 12 NCAC 10B .0305 in connection with another application for certification  
25 to this Commission, the Background Investigation need only be updated from the date of the last background  
26 investigation on file in the Division with documentation of compliance with 12 NCAC 10B .0305(e)(1), (2), (3), and  
27 a county-wide and certified records check for each name used by the applicant for each jurisdiction where the applicant  
28 has resided in North Carolina since the initial Background Investigation (Form F-8) was completed. In addition:

- 29 (1) If the applicant has been issued an out-of-state ~~driver's~~ driver's license by a state other than North  
30 Carolina since obtaining certification, then compliance with 12 NCAC 10B .0408(f)(4), is required;  
31 and
- 32 (2) If the applicant has resided in a state other than North Carolina since obtaining certification, a  
33 certified and county-wide record check from each jurisdiction (if available) shall be provided.

34 (d) If the Personal History Statement (F-3) required in Subparagraph (a)(5) of this Rule was completed more than 120  
35 days prior to the applicant's date of appointment, the Personal History Statement (F-3) shall be updated by the applicant  
36 who shall initial and date all changes or a new Personal History Statement (F-3) shall be completed.

1 (e) If the Mandated Background Investigation Form (F-8) required in Subparagraph (a)(6) of this Rule was completed  
2 more than 120 days prior to the applicant's date of appointment, the Mandated Background Investigation Form (F-8),  
3 shall be updated by the background investigator who shall initial and date all changes or a new Mandated Background  
4 Investigation Form (F-8), must be completed.

5 (f) The Background Investigation Form (F-8) shall include records checks from:

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

14 (g) The Background Investigation shall include records checks from jurisdictions where the applicant resided within  
15 the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:

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

28 (h) If the applicant had prior military service, the Background Investigation shall also include a copy of the applicant's  
29 ~~DD214~~ DD214, Certificate of Release from Active Duty, that shows the characterization of discharge for each  
30 discharge that occurred and military discipline received, if any. If the DD214 indicates a discharge characterization of  
31 any type other than Honorable, then a military records check shall also be required.

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

35 (j) The employing agency shall forward to the Division certified copies of any criminal charge(s) and disposition(s)  
36 known to the agency or listed on the applicant's Personal History Statement (F-3). The employing agency shall explain

1 any charges or other violations that may result from the records checks required in Paragraph (f) of this Rule that do  
2 not pertain to the applicant for certification.

3 ~~(d)~~(k) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal  
4 laws governing confidentiality.

5

6 *History Note: Authority G.S. 17E-4; 17E-7;*

7 *Eff. January 1, 1989;*

8 *Recodified from 12 NCAC 10B .0407 Eff. January 1, 1991;*

9 *Amended Eff. January 1, 1996; January 1, 1994; January 1, 1993; January 1, 1992;*

10 *Temporary Amendment Eff. March 1, 1998;*

11 *Amended Eff. August 1, 2002; August 1, 1998;*

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.

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

AGENCY: Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0410

**DEADLINE FOR RECEIPT: Friday, October 14, 2022.**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*In (a), line 6, insert an Oxford comma after "practitioner".*

*In (a), line 6, what is an "other licensed independent practitioner"?*

*In (a), line 6, what is the agency referring to when referencing the "physical requirements"? Are these physical requirements formalized in another Rule, in a written job description, or anywhere else?*

*In (a)(3), please delete "at least" unless there are other drugs which the agency is requiring the test to screen for. If there are other drugs you want to screen for, please state them here.*

*In (a)(3), line 17, please clarify whether "or their metabolites" refers to all of the drugs listed here. As written, it appears to apply only to amphetamines.*

*In (a)(4), lines 19-20, can you give a citation to the CFR, rather than the Federal Register? I'd assume that something published 5 years ago in the Register is already in the CFR.*

*In (a)(6), line 26, delete the comma after "programs".*

*In (b), lines 31-32, and in (c), p.1, line 37-p.2 line 1, what are the standards used to determine whether a positive drug result has been "explained... to the satisfaction of the agency's medical review officer"?*

*In (c), line 36, doesn't "the Division" already refer to the "Sheriff's Standards Division" per R. 0103? If so, please just make this "the Division."*

Brian Liebman  
Commission Counsel

Date submitted to agency: September 30, 2022



*In both (d) and (e), what about the presence of metabolites? Would that count as a positive or negative result?*

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

1 12NCAC 10B .0410 is amended **WITH CHANGES** as published in 37:01 NCR 23-24 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 **(e)(1)** 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)(2)** a chain of custody shall be maintained on the specimen from collection to the eventual  
15 discarding of the specimen;

16 **(e)(3)** the drug screen shall test for the presence of at least cannabis, cocaine, phencyclidine  
17 (PCP), opiates, and amphetamines or their metabolites;

18 **(d)(4)** 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 [23 \*\*\(e\)\(5\)\*\* 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](https://www.federalregister.gov/documents/2017/01/23/2017-</a></u><br/>22 <u>00979/mandatory-guidelines-for-federal-workplace-drug-testing-programs;</u></p></div><div data-bbox=)

25 **(f)(6)** 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 by the applicant or lateral transfer to the satisfaction of the  
32 agency's medical review ~~officer-officer~~, who shall be a licensed ~~physician, physician~~, the positive results are not  
33 required to be reported.

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

1 ~~explained~~ to the satisfaction of the agency's medical review officer, who shall be a licensed physician to the extent  
2 the drug screen conducted conforms to the specifications of ~~provided the drug screen conducted conforms to~~ this  
3 ~~Rule. 12 NCAC 10B .0410. .0301(6)(a), (b), (c), (d) and (f).~~

4 ~~(e)(d)~~ For reporting purposes, a result ~~will be~~ is considered "positive" only in the cases where the drug screen reveals  
5 the presence of an illegal drug at a level equal to or greater than the threshold value as established by the Department  
6 of Health and Human Services for Federal Workplace Drug Testing Programs and adopted by reference in ~~12 NCAC~~  
7 ~~10B .0410. this Rule. .0301(6).~~

8 (e) For reporting purposes, a result is considered "negative" only in those cases where the drug screen reveals the  
9 presence of an illegal drug at a level less than the threshold value as established by the Department of Health and  
10 Human Services for Federal Workplace Drug Testing Programs and incorporated by reference in this Rule.

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