

RRC STAFF OPINION

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

AGENCY: North Carolina Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0607

RECOMMENDATION DATE: September 1, 2023

RECOMMENDED ACTION:

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

COMMENT:

Rule .0607 requires a trainee for detention officer certification to meet certain requirements prior to certification including completing the required certification course and obtaining a passing score on the Commission-administered comprehensive written examination.

The prerequisite in Subparagraph (3) requires the trainee to "obtain the recommendation of the trainee's school director" that the trainee possesses the "minimum degree" of attributes, knowledge, and skill. There is no standard established by which the school director is to measure "minimum degree" leaving the recommendation to be based completely upon the subjective notions of the school director.

Further, the requirements of "attributes, knowledge, and skill" which the trainee must possess are ambiguous. To what "knowledge" or "skill" is the Commission referring which is not objectively measured by Subparagraphs (1) and (2)?

Accordingly, while the trainee may have accomplished all that is required in Subparagraphs (1) and (2) which contain objective standards, the school director, who is not a Commission employee, may arbitrarily determine that the trainee falls short. The subjectivity lends itself to unequal application among trainees by one school director, and among all school directors based upon their own subjective measures.

William W. Peaslee
Commission Counsel

Accordingly, staff recommends objection to the Rule pursuant to G.S. 150B-21.9(a)(2) for lack of clarity and ambiguity.

This Rule could easily be remedied by striking Subparagraph (3).

§ 150B-21.9. Standards and timetable for review by Commission.

(a) Standards. - The Commission must determine whether a rule meets all of the following criteria:

- (1) It is within the authority delegated to the agency by the General Assembly.
- (2) It is clear and unambiguous.
- (3) It is reasonably necessary to implement or interpret an enactment of the General Assembly, or of Congress, or a regulation of a federal agency. The Commission shall consider the cumulative effect of all rules adopted by the agency related to the specific purpose for which the rule is proposed.
- (4) It was adopted in accordance with Part 2 of this Article.

The Commission shall not consider questions relating to the quality or efficacy of the rule but shall restrict its review to determination of the standards set forth in this subsection.

The Commission may ask the Office of State Budget and Management to determine if a rule has a substantial economic impact and is therefore required to have a fiscal note. The Commission must ask the Office of State Budget and Management to make this determination if a fiscal note was not prepared for a rule and the Commission receives a written request for a determination of whether the rule has a substantial economic impact.

(a1) Entry of a rule in the North Carolina Administrative Code after review by the Commission creates a rebuttable presumption that the rule was adopted in accordance with Part 2 of this Article.

(b) Timetable. - The Commission must review a permanent rule submitted to it on or before the twentieth of a month by the last day of the next month. The Commission must review a rule submitted to it after the twentieth of a month by the last day of the second subsequent month. The Commission must review a temporary rule in accordance with the timetable and procedure set forth in G.S. 150B-21.1. (1991, c. 418, s. 1; 1995, c. 507, s. 27.8(f); 2000-140, s. 93.1(a); 2001-424, s. 12.2(b); 2003-229, s. 9.)

1 12 NCAC 10B .0607 is amended with changes as published in 37:02 NCR 182:

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3 **12 NCAC 10B .0607 SATISFACTION OF MINIMUM TRAINING REQUIREMENTS**

4 In order to satisfy the minimum training requirements for certification as a detention officer, a trainee shall:

- 5 (1) achieve a score of 70 percent correct answers on the Commission-administered comprehensive
6 written examination;
- 7 (2) demonstrate successful completion of an accredited offering of ~~the any "Detention~~ Detention Officer
8 Certification ~~Course~~ Course as shown by the certification of the school director; and
- 9 (3) obtain the recommendation of the trainee's school director that the trainee possesses at least the
10 minimum degree of general attributes, knowledge, and skill to function as an inexperienced
11 detention officer as evidenced by successful course completion pursuant to rule .0606. **An**
12 **inexperienced detention officer is an officer that has no prior experience performing the duties of a**
13 **detention officer as defined in 12 NCAC 10B .0103(13).**

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

16 *Eff. January 1, 1989; June 21, 2022*

17 *Amended Eff. January 1, 1996; January 1, 1992;*

18 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*
19 *2018.*

20 *Amended Eff. [~~November 1, 2022~~]/November 1, 2023.*