

CHAPTER 09 - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS

SUBCHAPTER 09A - CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION

SECTION .0100 - COMMISSION ORGANIZATION AND PROCEDURES

12 NCAC 09A .0101 LOCATION

The North Carolina Criminal Justice Education and Training Standards Commission is established in the Department of Justice and is located in the Old Education Building, 114 West Edenton Street, in Raleigh, North Carolina. The mailing address is:

North Carolina Criminal Justice Education
and Training Standards Commission
Post Office Drawer 149
Raleigh, North Carolina 27602
Telephone (919)716-6470

*History Note: Authority G.S. 17C-3; 17C-6;
Eff. January 1, 1981;
Amended Eff. November 1, 1998; August 15, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
2019.*

12 NCAC 09A .0102 PURPOSE

The purpose of the commission is to raise the level of competence within the criminal justice community by:

- (1) Establishing minimum standards for employment and retention of criminal justice personnel;
- (2) Establishing minimum standards for the training and education of criminal justice personnel;
- (3) Promoting the planning and development of a systematic career development program for criminal justice professionals by providing and encouraging advanced or specialized training, education, and certification;
- (4) Planning and promoting the development and improvement of a comprehensive system of education and training in the administration of criminal justice;
- (5) Conducting and stimulating research and planning, by public and private agencies, designed to improve education and training in the administration of criminal justice;
- (6) Studying the recruitment, selection, education and training of criminal justice personnel and recommending improvements in such methods; and
- (7) Maintaining liaison among local, state, and federal agencies with respect to criminal justice education and training.

*History Note: Authority G.S. 17C-1; 17C-6;
Eff. January 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
2019.*

12 NCAC 09A .0103 DEFINITIONS

The following definitions apply throughout Subchapters 12 NCAC 09A through 12 NCAC 09F, except as modified in 12 NCAC 09A .0107 for the purpose of the Commission's rule-making and administrative hearing procedures:

- (1) "Active Duty Military" means, for the purpose of determining eligibility for certification pursuant to 12 NCAC 09B .0401 and 12 NCAC 09B .0403, full-time duty in the active military service of the United States. Such term includes full-time training duty, annual training duty, and attendance while in the active military service at a school designated as a service school by law or by the Secretary of the military department concerned. Such term does not include full-time National Guard duty.
- (2) "Agency" or "Criminal Justice Agency" means those state and local agencies identified in G.S. 17C-2(2).

- (3) "Alcohol Law Enforcement Agent" means a law enforcement officer appointed by the Secretary of the Department of Public Safety as authorized by G.S. 18B-500.
- (4) "Chief Court Counselor" means the person responsible for administration and supervision of juvenile intake, probation, and post-release supervision in each judicial district, operating under the supervision of the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (5) "Commission of an offense" means 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.
- (6) "Convicted" or "Conviction" means the entry of:
 - (a) a plea of guilty;
 - (b) a verdict or finding of guilt by a jury, judge, magistrate, or other adjudicating body, tribunal, or official, either civilian or military; or
 - (c) a plea of no contest, nolo contendere, or the equivalent.
- (7) "Criminal Justice Officer(s)" means those officers identified in G.S. 17C-2(3).
- (8) "Criminal Justice System" means the whole of the State and local criminal justice agencies described in Item (2) of this Rule.
- (9) "Agency Head" means the chief administrator of any criminal justice agency, and specifically includes any chief of police or agency director. "Agency Head" also includes a designee appointed in writing by the Agency Head.
- (10) "Director" means the Director of the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (11) "Educational Points" means points earned toward the Professional Certificate Programs for studies completed, with passing scores achieved, for semester hour or quarter hour credit hours awarded from colleges or universities accredited by the Department of Education of the state in which the institution is located, from an accredited body recognized by either the U.S. Department of Education or the Council for Higher Education Accreditation, or from the state university of the state in which the institution is located. Each semester hour of college credit equals one educational point and each quarter hour of college credit equals two-thirds of an educational point.
- (12) "Enrolled" means that an individual is currently actively participating in an on-going presentation of a Commission-certified basic training course that has not concluded on the day probationary certification expires. The term "currently actively participating" as used in this definition means:
 - (a) for law enforcement officers, that the officer is attending an approved course presentation averaging a minimum of 12 hours of instruction each week; and
 - (b) for Department of Public Safety, Division of Adult Correction and Juvenile Justice personnel, that the officer is attending the last or final phase of the approved training course necessary for satisfying the total course completion requirements.
- (13) "High School" means an educational program that meets the compulsory attendance requirements in the jurisdiction in which the school is located.
- (14) "In-Service Training" means all training prescribed in 12 NCAC 09E .0105 that must be completed, with passing scores achieved, by all certified law enforcement officers during each full calendar year of certification.
- (15) "In-Service Training Coordinator" means the person designated by a Criminal Justice Agency head to administer the agency's In-Service Training program.
- (16) "Lateral Transfer" means the employment of a criminal justice officer by a Criminal Justice Agency based upon the officer's special qualifications or experience, without following the usual selection process established by the agency for basic officer positions.
- (17) "Law Enforcement Code of Ethics" means the code adopted by the Commission on September 19, 1973, that reads as follows:

As a law enforcement officer, my fundamental duty is to serve the community; to safeguard lives and property; to protect the innocent against deception, the weak against oppression or intimidation, and the peaceful against violence or disorder; and to respect the constitutional rights of all to liberty, equality, and justice.

I will keep my private life unsullied as an example to all, and will behave in a manner that does not bring discredit to me or to my agency. I will maintain courageous calm in the face of danger, scorn, or ridicule; develop self-restraint; and be constantly mindful of the welfare of others. Honest in thought and deed both in my personal and official life, I will be exemplary in obeying the law and the regulations of my department. Whatever I see or hear of a

confidential nature or that is confided to me in my official capacity will be kept ever secret unless revelation is necessary in the performance of my duty.

I will never act officiously or permit personal feelings, prejudices, political beliefs, aspirations, animosities or friendships to influence my decisions. With no compromise for crime and with relentless prosecution of criminals, I will enforce the law courteously and appropriately without fear or favor, malice or ill will, never employing unnecessary force or violence and never accepting gratuities.

I recognize the badge of my office as a symbol of public faith, and I accept it as a public trust to be held so long as I am true to the ethics of the police service. I will never engage in acts of corruption or bribery, nor will I condone such acts by other police officers. I will cooperate with all legally authorized agencies and their representatives in the pursuit of justice.

I know that I alone am responsible for my own standard of professional performance and will take every reasonable opportunity to enhance and improve my level of knowledge and competence.

I will constantly strive to achieve these objectives and ideals, dedicating myself before God or by affirmation to my chosen profession law enforcement.

- (18) "Juvenile Court Counselor" means a person responsible for intake services and court supervision services to juveniles under the supervision of the Chief Court Counselor.
- (19) "Juvenile Justice Officer" means a person designated by the Secretary of the Department of Public Safety, Division of Adult Correction and Juvenile Justice to provide for the care and supervision of juveniles placed in the physical custody of the Department.
- (20) "Law Enforcement Officer" means an appointee of a Criminal Justice Agency, an agency of the State, or of 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.
- (21) "Law Enforcement Training Points" means points earned toward the Law Enforcement Officers' Professional Certificate Program by successful completion of Commission-approved law enforcement training courses. Twenty classroom hours of Commission-approved law enforcement training equals one law enforcement training point.
- (22) "LIDAR" is an acronym for "Light Detection and Ranging" and means a speed-measuring instrument that electronically computes, from transmitted infrared light pulses, the speed of a vehicle under observation.
- (23) "Local Confinement Personnel" means any officer, supervisor, or administrator of a local confinement facility in North Carolina as defined in G.S. 153A-217; any officer, supervisor, or administrator of a county confinement facility in North Carolina as defined in G.S. 153A-218; or any officer, supervisor, or administrator of a district confinement facility in North Carolina as defined in G.S. 153A-219.
- (24) "Misdemeanor" means those criminal offenses not classified under the laws, statutes, or ordinances as felonies. Misdemeanor offenses are classified by the Commission as follows:
 - (a) "Class A Misdemeanor" means a misdemeanor committed or omitted in violation of any common law, duly-enacted ordinance, or criminal statute of this State that is not classified as a Class B Misdemeanor pursuant to Sub-item (24)(b) of this Rule. Class A Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of not more than six months. Excluded from "Class A Misdemeanor" criminal offenses for jurisdictions other than North Carolina are motor vehicle or traffic offenses designated as misdemeanors under the laws of other jurisdictions or duly enacted ordinances of an authorized governmental entity, with the exception of the offense of impaired driving that is included herein as a Class A Misdemeanor if the offender could have been sentenced for a term of not more than six months. Also included herein as a Class A Misdemeanor is the offense of impaired driving, if the offender was sentenced under punishment level three G.S. 20-179(i), level four G.S. 20-179(j), or level five G.S. 20-179(k). Class A Misdemeanor shall also include acts committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, or criminal

statute of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of not more than six months.

- (b) "Class B Misdemeanor" means an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this State that is classified as a Class B Misdemeanor as set forth in the Class B Misdemeanor Manual as published by the North Carolina Department of Justice, incorporated herein by reference, and shall include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6. The publication is available from the Commission's website: <http://www.ncdoj.gov/getdoc/60bb12ca-47c0-48cb-a0e3-6095183c4c2a/Class-B-Misdemeanor-Manual-2005.aspx>. Class B Misdemeanor also includes any act committed or omitted in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of any jurisdiction other than North Carolina, either civil or military, for which the maximum punishment allowable for the designated offense under the laws, statutes, or ordinances of the jurisdiction in which the offense occurred includes imprisonment for a term of more than six months but not more than two years. Excluded from this grouping of "Class B Misdemeanor" criminal offenses for jurisdictions other than North Carolina, are motor vehicle or traffic offenses designated as being misdemeanors under the laws of other jurisdictions with the following exceptions: Class B Misdemeanor includes the following:
- (i) either first or subsequent offenses of driving while impaired if the maximum allowable punishment is for a term of more than six months but not more than two years;
 - (ii) driving while license permanently revoked or permanently suspended;
 - (iii) those traffic offenses occurring in other jurisdictions which are comparable to the traffic offenses specifically listed in the Class B Misdemeanor Manual; and
 - (iv) an act committed or omitted in North Carolina prior to October 1, 1994, in violation of any common law, duly enacted ordinance, criminal statute, or criminal traffic code of this State for which the maximum punishment allowable for the designated offense included imprisonment for a term of more than six months but not more than two years.
- (25) "Qualified Assistant" means an additional staff person designated by the School Director to assist in the administration of a course when an institution or agency assigns additional responsibilities to the certified School Director during the planning, development, and implementation of a certified course.
- (26) "Radar" means a speed-measuring instrument that transmits microwave energy in the 10,500 to 10,550 MHZ frequency (X) band, the 24,050 to 24,250 MHZ frequency (K) band, or the 33,400 to 36,000 MHZ (Ka) band and operates in either the stationary or moving mode.
- (27) "Resident" means any youth committed to a facility operated by the Department of Public Safety, Division of Adult Correction and Juvenile Justice.
- (28) "School" or "criminal justice school" means an institution, college, university, academy, or agency that offers criminal justice, law enforcement, or traffic control and enforcement training for criminal justice officers or law enforcement officers. "School" includes the criminal justice training course curriculum, instructors, and facilities.
- (29) "School Director" means the person designated by the sponsoring institution or agency to administer the criminal justice school.
- (30) "Speed-Measuring Instruments" (SMI) means those devices or systems, including RADAR, Time-Distance, and LIDAR, approved under authority of G.S. 17C-6(a)(13) for use in North Carolina in determining the speed of a vehicle under observation and particularly includes all devices or systems described or referenced in 12 NCAC 09C .0601.
- (31) "Standards Division" means the Criminal Justice Standards Division of the North Carolina Department of Justice.
- (32) "Time-Distance" means a speed-measuring instrument that electronically computes, from measurements of time and distance, the average speed of a vehicle under observation.

History Note: Authority G.S. 17C-2; 17C-6; 17C-10; 153A-217;
Eff. January 1, 1981;

Amended Eff. November 1, 1981; August 15, 1981;
Readopted Eff. July 1, 1982;
Temporary Amendment Eff. December 14, 1983 for a period of 120 days to expire on April 12, 1984;
Amended Eff. November 1, 1993; March 1, 1990; July 1, 1989;
Temporary Amendment Eff. October 1, 1994 for a period of 180 days to expire on April 1, 1995;
Amended Eff. August 1, 2000; April 1, 1999; August 1, 1998; January 1, 1995;
Temporary Amendment Eff. January 1, 2001;
Amended Eff. August 1, 2002; April 1, 2001;
Temporary Amendment Eff. April 15, 2003;
Amended Eff. January 1, 2017; February 1, 2016; January 1, 2015; January 1, 2006; June 1, 2005; April 1, 2004;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
Amended Eff. October 1, 2022.

12 NCAC 09A .0104 STANDING COMMITTEES
12 NCAC 09A .0105 SPECIAL COMMITTEES

History Note: Authority G.S. 17C-5; 17C-6; 17C-8;
Eff. January 1, 1981;
Repealed Eff. July 1, 1987.

12 NCAC 09A .0106 CRIMINAL JUSTICE STANDARDS DIVISION

The Criminal Justice Standards Division of the Department of Justice shall administer the standards set forth in these Rules regarding the certification of criminal justice officers and instructors and the accreditation of criminal justice training schools and programs. The Standards Division shall present to the Commission for its adoption administrative procedures for those programs of certification and accreditation and may create appropriate forms for application for and administration of those programs.

History Note: Authority G.S. 17C-6; 17C-9;
Eff. January 1, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019.

12 NCAC 09A .0107 PROCEDURES FOR PETITIONS FOR RULE-MAKING

- (a) Petitions for Rule-Making shall be submitted to the Commission and shall contain:
- (1) petitioner's name, address, and telephone number;
 - (2) a draft of the proposed rule or rule change for adoptions or amendments; and
 - (3) the reason for its proposal.
- (b) Petitioners may also submit the following in the petition:
- (1) the effect of the proposal on existing rules or decisions;
 - (2) data supporting the proposal;
 - (3) practices likely to be affected by the proposal; and
 - (4) a list or description of persons likely to be affected by the proposed rule.

History Note: Authority G.S. 150B-20;
Eff. January 1, 1981;
Amended Eff. April 1, 2009; November 1, 1993; July 1, 1988; April 1, 1984;
Pursuant to G.S. 150B-33(b)(9), Administrative Law Judge Donald W. Overby declared Paragraph (d) of this rule void as applied in Curtis Canty v. NC Criminal Justice Education and Training Standards Commission (14 DOJ 01202);
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
Amended Eff. August 1, 2019.

12 NCAC 09A .0108 APPLICABILITY OF RADAR/TDS STANDARDS PRE 7/1/82

History Note: *Authority G.S. 17C-6;*
 Eff. July 1, 1982;
 Repealed Eff. August 1, 2014.

SECTION .0200 - ENFORCEMENT OF RULES

12 NCAC 09A .0201 INVESTIGATION OF VIOLATION OF RULES

- (a) If any criminal justice agency, school, authorized representative acting on behalf of either, or individual is reported to be or suspected of being in violation of any of the rules in this Chapter, the Commission may take action in accordance with Rules .0202 through .0206 of this Section if necessary to correct the violation and to ensure that similar violations do not occur in the future.
- (b) Before taking 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.
- (c) The Probable Cause Committee shall convene prior to the next regular meeting of the Commission, shall consider the report of the Standards Division, and shall make a determination as to whether or not probable cause exists that the Commission's rules have been violated.
- (d) If it is determined by the Probable Cause Committee that probable cause exists, it may:
- (1) direct the Standards Division to conduct a further investigation of the alleged violation;
 - (2) direct the Standards Division to conduct an administrative hearing in the matter, pursuant to Rule .0207 of this Subchapter; or
 - (3) determine the appropriate sanctions against the violator pursuant to the Commission's rules.

History Note: *Authority G.S. 17C-6; 17C-10;*
 Eff. January 1, 1981;
 Amended Eff. March 1, 2004; November 1, 1993; July 1, 1990;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
 2019;
 Amended Eff. January 1, 2021.

12 NCAC 09A .0202 SANCTIONS FOR VIOLATIONS BY AGENCIES OR SCHOOLS

If the Commission finds that a violation has been committed by an agency or school, the Commission may:

- (1) issue an oral warning and request for compliance;
- (2) issue a written warning and request for compliance;
- (3) issue an official written reprimand;
- (4) suspend and refuse to grant accreditation to any school or program or course of instruction until proper corrective measures have been taken to bring the agency or school into compliance with these Rules and verification of such compliance has been made by the Commission; or
- (5) suspend and refuse to grant accreditation to any school or program or course of instruction for a specific period of time not to exceed five years.

History Note: *Authority G.S. 17C-6; 17C-10;*
 Eff. January 1, 1981;
 Amended Eff. July 1, 1990;
 Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
 2019.

12 NCAC 09A .0203 SANCTIONS FOR VIOLATIONS BY INDIVIDUALS

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.

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. July 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019.*

12 NCAC 09A .0204 SUSPENSION: REVOCATION: OR DENIAL OF CERTIFICATION

(a) The Commission shall revoke the certification of a criminal justice officer when the Commission finds that the officer has committed or been convicted of:

- (1) a felony offense; or
- (2) a criminal offense for which the authorized punishment included imprisonment for more than two years.

(b) The Commission may suspend, revoke, or deny the certification of a criminal justice officer when the Commission finds that the applicant for certification or the certified officer:

- (1) 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;
- (2) fails to meet or maintain one or more of the minimum employment standards required by 12 NCAC 09B .0100 for the category of the officer's certification or fails to meet or maintain one or more of the minimum training standards required by 12 NCAC 09B .0200 or 12 NCAC 09B .0400 for the category of the officer's certification;
- (3) has committed or been convicted of:
 - (A) a criminal offense or unlawful act defined in 12 NCAC 09A .0103 as a Class B misdemeanor; or
 - (B) four or more criminal offenses or unlawful acts defined in 12 NCAC 09A .0103 as a Class A misdemeanor, each of which occurred after the date of initial certification;
- (4) has been discharged by a criminal justice agency for commission or conviction of:
 - (A) a motor vehicle offense requiring the revocation of the officer's driver's license; or
 - (B) any other offense involving moral turpitude;
- (5) has been discharged by a criminal justice agency because the officer lacks the mental or physical capabilities to properly fulfill the responsibilities of a criminal justice officer;
- (6) has knowingly made a material misrepresentation of any information required for certification or accreditation;
- (7) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, obtained or attempted to obtain credit, training or certification from the Commission;
- (8) has knowingly and willfully, by any means of false pretense, deception, defraudation, misrepresentation or cheating whatsoever, aided another person in obtaining or attempting to obtain credit, training or certification from the Commission;
- (9) has failed to make either of the notifications as required by 12 NCAC 09B .0101(8);
- (10) has been removed from office by decree of the Superior Court in accord with the provisions of G.S. 128-16 or has been removed from office by sentence of the court in accord with the provisions of G.S. 14-230;
- (11) fails to satisfactorily complete the minimum in-service training requirements as prescribed in 12 NCAC 09E;
- (12) has refused to submit to an applicant or lateral transferee drug screen as required by the rules in this Chapter, or has refused to submit to an in-service drug screen pursuant to the guidelines set forth in the Drug Screening Implementation Guide as required by the agency through which the officer is certified;
- (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;
- (14) has been denied certification or had certification suspended or revoked by the North Carolina Sheriffs' Education and Training Standards Commission, the North Carolina Criminal Justice

Education and Training Standards Commission; the North Carolina Company/Campus Police Program; or a similar North Carolina, out of state or federal approving, certifying or licensing agency;

- (15) has performed activities or duties for which certification by the Commission is required without having first obtained the appropriate certification; or
- (16) has been convicted of any offense proscribed by 18 USC 922(g)(8) that would prohibit possession of a firearm or ammunition.

(c) Following suspension, revocation, or denial of the person's certification, the person may not remain employed or appointed as a criminal justice officer and the person may not exercise any authority of a criminal justice officer during a period for which the person's certification is suspended, revoked, or denied.

History Note: Authority G.S. 17C-6; 17C-10; Eff. January 1, 1981; Amended Eff. April 1, 2009; February 1, 2006; August 1, 2001; August 1, 1995; November 1, 1993; March 1, 1992; July 1, 1990; Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019.

12 NCAC 09A .0205 PERIOD OF SUSPENSION: REVOCATION: OR DENIAL

(a) When the Commission revokes or denies the certification of a criminal justice officer, the period of the sanction shall be permanent where the cause of sanction is:

- (1) commission or conviction of a felony offense, except as provided by G.S. 17C-13(a);
- (2) commission or conviction of a criminal offense for which punishment is authorized by law to include imprisonment for more than two years, except as provided by G.S. 17C-13(a); or
- (3) the second suspension of an officer's certification for any of the causes requiring a five-year period of suspension pursuant to 12 NCAC 09A .0204.

(b) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be not less than five years; however, the Commission shall reduce or suspend the period of sanction or substitute a period of probation in lieu of suspension of certification, or impose a combination of reduction, suspension, or probation as determined on a case-by-case basis following a consent order or an administrative hearing, where the cause of sanction is:

- (1) commission or conviction of a criminal offense other than those listed in Paragraph (a) of this Rule;
- (2) refusal to submit to the applicant or lateral transferee drug screen required by these Rules;
- (3) production of a positive result on a drug screen reported to the Commission under 12 NCAC 09C .0310, where the positive result cannot be explained to the satisfaction of the agency's Medical Review Officer, who shall be a licensed physician;
- (4) material misrepresentation of any information required for certification or accreditation;
- (5) obtaining, attempting to obtain, aiding another person to obtain, or aiding another person to attempt to obtain credit, training or certification by any means of false pretense, deception, fraud, misrepresentation or cheating;
- (6) failure to make either of the notifications as required by 12 NCAC 09B .0101(13);
- (7) removal from office under the provisions of G.S. 128-16 or the provisions of G.S. 14-230;
- (8) performing activities or duties for which certification by the Commission is required without having first obtained the appropriate certification; or
- (9) commission or conviction of four or more crimes or unlawful acts defined as "Class B misdemeanors" in 12 NCAC 09A .0103(24)(b), regardless of the date of conviction.

(c) When the Commission suspends or denies the certification of a criminal justice officer, the period of sanction shall be for an indefinite period, but continuing so long as the stated deficiency, infraction, or impairment continues to exist, where the cause of sanction is:

- (1) failure to meet or satisfy relevant basic training requirements pursuant to 12 NCAC 09B .0205, .0225, .0235, and .0236;
- (2) failure to meet or maintain the minimum standards of employment pursuant to 09B .0101, .0111, .0114, .0116, .0117;
- (3) discharge from a criminal justice agency for impairment of physical or mental capabilities; or
- (4) failure to meet or satisfy the in-service training requirements as prescribed in 12 NCAC 09E.

*History Note: Authority G.S. 17C-6; 17C-10;
Eff. January 1, 1981;
Amended Eff. February 1, 2006; August 1, 2001; November 1, 1993; July 1, 1990; July 1, 1989;
October 1, 1985;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25,
2019;
Amended Eff. March 1, 2024; January 1, 2022; July 1, 2020.*

12 NCAC 09A .0206 SUMMARY SUSPENSIONS

(a) The Commission, by and through the Probable Cause Committee, shall summarily suspend the certification of a criminal justice officer or instructor before the commencement of proceedings for suspension or revocation of the certification if the public health, safety, or welfare requires action pursuant to G.S. 150B-3. The Commission has determined that the following conditions specifically affect the public health, safety, or welfare and therefore it, by and through the Probable Cause Committee, as outlined in 12 NCAC 09A .0201, shall summarily suspend a certification of a criminal justice officer if:

- (1) the person has committed or been convicted of a violation of the criminal code that would require a permanent revocation or denial of certification;
- (2) the certified officer fails to complete the in-service training requirements as prescribed in 12 NCAC 09E; or
- (3) the certified officer has produced a positive result on a urinalysis test, conducted in accordance with 12 NCAC 09C .0310;

(b) For the purpose of considering a summary suspension of certification, the Probable Cause Committee shall meet only upon notice given by mail, telephone, or other means not less than 48 hours in advance of the meeting.

(c) A summary suspension shall be effective on the date specified in the order of summary suspension or upon service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings for suspension and revocation.

(d) The Director, upon receipt of information showing the existence of a basis for summary suspension provided for in Subparagraph (a)(1), (2), or (3) of this Rule, shall coordinate the meeting described in Paragraph (b) of this Rule. All affected persons shall be notified that the person may submit any pertinent matters to the Probable Cause Committee for its consideration before the Committee acts on the summary suspension issue. No person shall be allowed more than 48 hours to submit information to the Probable Cause Committee.

(e) Upon oral notification by the Director that the certification of an officer or instructor is being summarily suspended by written order, the officer or instructor shall not perform duties requiring certification by the Commission.

(f) The Commission, by and through the Director, upon determining that a Commission-certified Concealed Carry Handgun Instructor has conducted a concealed carry handgun training course as mandated by G.S. 14-415.12(a)(4) that is not in compliance with 12 NCAC 09F .0102 shall do the following until such time as the training course has been brought into compliance or reported to the Probable Cause Committee for action:

- (1) summarily suspend the Concealed Carry Handgun Instructor certification, prohibiting him or her from delivering concealed carry handgun training until the Director determines the training program is brought into compliance with 12 NCAC 09F .0102 and 12 NCAC 09F .0105 of this Chapter; and
- (2) inform the instructor that he or she may appeal the Director's suspension by requesting, in writing, a formal hearing before the Probable Cause Committee at the next scheduled Commission meeting.

(g) The Commission, by and through the Director, upon determining that a Commission-certified instructor has conducted a Commission-approved training course in a way that was not in accordance with the requirements of this Chapter or has conducted a Commission-approved training course while being in violation of the instructor's minimum standards as outlined in 12 NCAC 09B .0301 shall do the following until such time as the training course or his or her instructor certification has been brought into compliance:

- (1) summarily suspend the individual's Instructor's certification, prohibiting him or her from delivering Commission approved training until the noncompliance is remedied; and
- (2) the Director shall send a report of all summary suspensions for a formal hearing before the Probable Cause Committee at the next scheduled Commission meeting.

(h) The Commission, by and through the Director, upon determining a Commission-certified instructor has been alleged to have violated a certification rule as outlined in this Chapter shall do the following:

- (1) summarily suspend the individual's Instructor's certification, prohibiting him or her from delivering Commission approved training until the matter is resolved; and
- (2) the Director shall send a report of all summary suspensions for a formal hearing before the Probable Cause Committee at the next scheduled Commission meeting.

(i) A summary suspension shall be effective on the date specified in the order of summary suspension or upon service of the certified copy of the order at the last known address of the person, whichever is later. The summary suspension shall remain effective during the proceedings for suspension or revocation.

(j) The Commission, by and through the Director, upon determining that a criminal justice officer who was issued a waiver of the requirements of 12 NCAC 09C .0306 has not met those requirements within 60 days of being awarded general certification by the Commission, shall summarily suspend the officer's certification until the officer meets the requirements of 12 NCAC 09C .0306.

*History Note: Authority G.S. 17C-6; 17C-10; 150B-3;
Eff. January 1, 1981;
Amended Eff. October 1, 2017; February 1, 2016; December 1, 2007; March 1, 2004; July 1, 1990; July 1, 1989; October 1, 1985; August 15, 1981;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. May 25, 2019;
Amended Eff. March 1, 2024; August 1, 2021.*

12 NCAC 09A .0207 ADMINISTRATIVE HEARING PROCEDURES

(a) Administrative hearings in contested cases conducted by the Commission or an Administrative Law Judge as authorized in G.S. 150B-40(e) shall be governed by:

- (1) procedures set out in Article 3A of G.S. 150B;
- (2) the Rules of Civil Procedure as contained in G.S. 1A-1;
- (3) the General Rules of Practice for the Superior and District Courts as authorized by G.S. 7A-34 and found in the Rules Volume of the North Carolina General Statutes.

(b) The rules establishing procedures for contested cases adopted by the Office of Administrative Hearings as contained in 26 NCAC 03 are hereby incorporated by reference, including subsequent amendments and editions, for contested cases for which this agency has authority to adopt rules pursuant to G.S. 150B-38(h).

(c) If the case is conducted under G.S. 150B-40(b), the presiding officer shall have the powers and duties of the Chief Administrative Law Judge or the presiding Administrative Law Judge in 26 NCAC 03.

(d) Pursuant to G.S. 17C-11(b), an applicant for certification, or a certified officer shall have 30 days from the date of receipt of a notice of proposed action by the Commission to request a contested case hearing.

*History Note: Authority G.S. 17C-6; 17C-11(b); 150B-38(h); 150B-40;
Eff. August 1, 2019.*

12 NCAC 09A .0208 PUBLIC COMMENTS AT HEARINGS

For hearings in which public comments are allowed or required, the following rules apply:

- (1) The Chair may:
 - (a) authorize the designation of any agency employee to act as the hearing officer;
 - (b) set out the type of hearings that the designated employees are authorized to conduct;
 - (c) reference the rules of procedure for conducting public rulemaking hearings.
- (2) The Chair may set time limits on oral presentations.
 - (a) Unless the Chair specifies otherwise, oral presentations are limited to five minutes per person or requesting entity;
 - (b) The Chair may require that oral presentations be limited to representative spokespersons for those advocating or opposing agenda items;
 - (c) In making the above decisions, the Chair should consider:
 - (i) the length of the agenda and of the meeting;
 - (ii) the number of rules or agenda items subject to comment;
 - (iii) the complexity of the issues;
 - (iv) the public interest in a particular rule, report or agenda item;

- (v) the number of people desiring to address the agency;
 - (vi) the variations in the speakers' arguments and level of agreement within their positions or relationships;
 - (vii) the nature of the comments in relation to the agency's scope of review; and
 - (viii) the amount of notice given to the agency, commission, or committee.
- (3) The Chair will set the date, time, and place of any public hearing.
 - (a) If no hearing end time is designated prior to the beginning of the meeting, the Chair may end the hearing once the purpose for that public hearing has been concluded, or
 - (b) If a hearing end time has been designated for a hearing in which comments will be accepted, the hearing officer will remain in the meeting until such end time is reached.
 - (4) When a hearing officer is designated, the hearing officer will collect written and oral submission presented during the hearing and submit to the agency, commission or committee as appropriate following the close of the record.
 - (5) Nothing in this Rule is meant to require the agency, commission, or committee to allow public comment when not required by statute.
 - (6) For purposes of this Rule, Chair means the person designated as chairperson for the agency, commission or committee, holding the hearing. In the event the Chair is not present at the hearing, the Vice-Chair will preside, and if the Vice-Chair is also not present, then the hearing officer will preside, and either will act, for purposes of this rule and for the hearing, with the authority of the Chair.

History Note: Authority G.S. 17C-6;
Eff. November 1, 2024.

12 NCAC 09A .0209 EXTENDED RENEWALS AND REPORTING DUE TO DISASTER

Due to the disaster caused by Hurricane Helene as referenced in the Governor's Executive Order 315, the General Assembly's Session Laws 2024-51 and 2024-53, and the President's Declaration FEMA-4827-DR, all deadlines, expiration dates, or reporting requirements of any sort set forth in Chapter 09 that refer or relate to certification renewals, educational requirements, or training requirements are extended until March 1, 2025, for the following persons and entities:

- (1) Any of the following persons who reside in an affected jurisdiction set forth in Item (3) of this Rule:
 - (a) criminal justice officer;
 - (b) instructor;
 - (c) professional lecturer;
 - (d) school director;
 - (e) qualified assistant; and
 - (f) any other person who is certified by the Commission.
- (2) Any of the following entities located in an affected jurisdiction set forth in Item (3) of this Rule:
 - (a) law enforcement agency;
 - (b) school; and
 - (c) any other entity that is accredited by the Commission or which has reporting requirements to the Commission.
- (3) Affected jurisdictions, as defined in Declaration FEMA-4827-DR and amendments issued by the President of the United States, include:
 - (a) Alexander County
 - (b) Alleghany County
 - (c) Ashe County
 - (d) Avery County
 - (e) Buncombe County
 - (f) Burke County
 - (g) Cabarrus County
 - (h) Caldwell County
 - (i) Catawba County
 - (j) Cherokee County
 - (k) Clay County

- (l) Cleveland County
- (m) Forsyth County
- (n) Gaston County
- (o) Graham County
- (p) Haywood County
- (q) Henderson County
- (r) Iredell County
- (s) Jackson County
- (t) Lee County
- (u) Lincoln County
- (v) Macon County
- (w) Madison County
- (x) McDowell County
- (y) Mecklenburg County
- (z) Mitchell County
- (aa) Nash County
- (bb) Polk County
- (cc) Rowan County
- (dd) Rutherford County
- (ee) Stanly County
- (ff) Surry County
- (gg) Swain County
- (hh) Transylvania County
- (ii) Union County
- (jj) Watauga County
- (kk) Wilkes County
- (ll) Yadkin County
- (mm) Yancey County
- (nn) Eastern Band of Cherokee Indians

History Note: G.S. 17C-6; Authority Session Law 2024-53 and State of North Carolina Executive Order 315 inclusive of amendments, to expire on March 1, 2025; Emergency Adoption Eff. November 20, 2024.