

**IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS  
24 DOJ 03486**

**Respondent.**

## EXCEPTIONS

In the absence of state constitutional or statutory direction, the appropriate burden of proof must be “judicially allocated on considerations of policy, fairness and common sense.” 1 Kenneth S. Broun, *Brandis & Broun on North Carolina Evidence* §37 (4th . Ed. 1993). Two general rules guide the allocation of the burden of proof outside the criminal context: (1) the burden rests on the party who asserts the affirmative, in substance rather than form; and (2) the burden rests on

~~the party with peculiar knowledge of the facts and circumstances. *Id.*~~

3. Conclusion of Law #6 should be amended to accurately reflect the Respondent's position on the burden of proof:
6. Neither the North Carolina Constitution nor the General Assembly has addressed the burden of proof in Article 3A cases. ~~Applying the statutory law along with "considerations of policy, fairness and common sense," the Undersigned determines that Respondent should bear the burden of proof in an action where Respondent proposes to deny an individual's justice officer certification based upon its investigation into that individual. While N.C. Gen. Stat. § 150B-40 enumerates the powers of the presiding officer, including an Administrative Law Judge in Article 3A cases, such statute does not address which party has the burden of proof in an Article 3A contested case hearing. Neither has the North Carolina Constitution nor the General Assembly addressed the burden of proof in Article 3A cases. However, the Commission has consistently held that Petitioner has the burden of proof in the case at bar as does a petitioner in an Article 3 case. Overcash v. N.C. Dep't. of Env't & Natural Resources, 179 N.C. App 697, 635 S.E.2d 442 (2006) (stating that "the burden of proof rests on the petitioner challenging an agency decision").~~
4. Conclusion of Law # 7 should be amended to conclude that if the burden is on Respondent, the burden has been met as indicated by the ALJ:
7. The burden of proof is the preponderance of the evidence standard. See N.C. Gen. Stat. §§ 150B-23(a); 29(a); and 34(a). If a reviewing court places the burden on the Respondent, the burden has been met.
5. Proposal for Decision should be revised to reflect the final decision of the Commission as follows:

#### **PROPOSAL FOR DECISION ORDER**

Based on the foregoing Findings of Fact and Conclusions of Law, it is hereby **ORDERED proposed** that Petitioner's justice officer certification should be denied for a period of five years but that the period of denial should be suspended, and if Petitioner is hired by a Sheriff's Office in North Carolina, that she be placed on a one year period of probation during which time she successfully complete the required detention officer certification course.

This the 19<sup>th</sup> day of May 2025.

JEFF JACKSON  
Attorney General

/s/ J. Joy Strickland

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COUNSEL TO THE COMMISSION

### **CERTIFICATE OF SERVICE**

The undersigned does hereby certify that a copy of the foregoing **EXCEPTIONS** have been duly served upon **Petitioner** by mailing a copy to the address below:

**Alexandria McCaskill**  
**200 Noland Drive**  
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This the 19<sup>th</sup> day of May 2025.

**JEFF JACKSON**  
**Attorney General**

**Attorney General**

/s/ J. Joy Strickland/  
**J. Joy Strickland**  
**Senior Deputy Attorney General**  
**ATTORNEY FOR THE COMMISSION**