STATE OF NORTH CAROLINA **COUNTY OF BRUNSWICK**	**IN THE OFFICE OF ADMINISTRATIVE HEARINGS** **24 DOJ 03484**
DAVID WILLIAM PATE, **Petitioner,** **v.** **NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION,** **Respondent.**	**PROPOSED FINAL AGENCY DECISION**

THIS MATTER was commenced by a request filed September 4, 2024, with the Director of the Office of Administrative Hearings for the assignment of an Administrative Law Judge. Notice of Contested Case Assignment and Order for Prehearing Statements (24 DOJ 03484) were filed August 10, 2024. The parties received proper Notice of Hearing and the Administrative Hearing was held in Wilmington, North Carolina on May 20, 2025, before the Honorable Samuel K. Morris, Administrative Law Judge.

The Petitioner was represented by counsel, Barry Henline. The North Carolina Sheriffs' Education and Training Standards Commission (hereinafter the Commission or Respondent) was represented by Senior Deputy Attorney General J. Joy Strickland.

On August 18, 2025, Judge Morris filed his Proposal for Decision. On August 26, 2025, counsel to the Commission sent by certified mail a copy of the Proposal for Decision to the Petitioner with a letter explaining Petitioner's rights: (1) to file exceptions or proposed findings of fact; (2) to file written argument; and (3) the right to present oral argument to the Commission.

This matter came before Commission for entry of its **Final Agency Decision** at its regularly scheduled meeting on December 4, 2025.

Having considered all competent evidence and argument and having reviewed the relevant provisions of Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, the Commission, based upon clear, cogent and convincing evidence, does hereby make the following:

FINDINGS OF FACT

1. Respondent North Carolina Sheriffs' Education and Training Standards Commission ("Respondent") has authority granted under Chapter 17E of the North Carolina General Statutes and Title 12, Chapter 10B of the North Carolina Administrative Code, to certify detention officers and to deny, revoke, or suspend such certification.

2. Petitioner David William Pate ("Petitioner") is an applicant for certification as a detention officer through the Brunswick County Sheriffs' Office, application being made May 23, 2022. (Resp't Ex. 1)

3. Included with Petitioner's certification application packet were the following:

> Personal History Statement Form F-3,
> AOC-CR-280 expungement verification form,
> AOC match report regarding certain dismissed charges, Statements provided by Petitioner about his criminal history, and
> Clerk of Court records from Brunswick County, Wake County, and the state of South Carolina. (Resp't Ex. 2-4).

4. Sheriffs' Standards Division field representative and investigator Trey Piland was assigned to investigate certain admissions made on the Personal History Form F-3 submitted by Petitioner. Those admissions included:

Convictions

a. ~~Felonious~~ Misdemeanor larceny

   i. Petitioner was charged with felony larceny and convicted of misdemeanor larceny on January 22, 2014, in Wake County file number 13 CR 213084. (Resp't Ex. 3, p. 3) When Petitioner was charged with this offense, he had started to struggle with substance abuse and pawned a family member's jewelry. He completed a seven month in patient treatment program. He has since had this conviction expunged. (Resp't Ex. 4, p. 2)

   ii. This offense is a Class B misdemeanor. (Resp't Ex. 8)

b. Misdemeanor solicitation to obtain property by false pretense

   i. Petitioner was charged with larceny and felony obtaining property by false pretense. Petitioner was working on boats for another person and took items from the garage of the homeowner to sell for controlled substances. Petitioner admitted himself into substance abuse treatment and later pled guilty to misdemeanor solicitation to obtain property by false pretense. (Resp't Ex. 3; Resp't Ex. 4, p. 5)

   ii. This offense is a Class A misdemeanor.

Commission of offenses:

c. Shoplifting

   i. Petitioner was charged with shoplifting in South Carolina in violation of S.C. Code Ann. § 16-13-100 (File number 2016830000923) when he concealed a vacuum cleaner tip in his back pocket. Petitioner paid for other items but purposefully failed to pay for the vacuum cleaner tip. (Resp't Ex. 4, p. 6) Petitioner asserted that substance abuse played a role in his poor decision-making process during the commission of this offense and that this charge has been expunged from his record.

   ii. Petitioner was 30 years old at the time of the commission of this offense and therefore N.C. Gen. Stat. §17E-12(b) is not applicable.

   iii. This offense is a Class A misdemeanor.

d. Assault on a female

   i. Petitioner was charged with assault on a female, injury to personal property, and breaking and/or entering in Wake County (07CR036146) on May 22, 2007. (Resp't Ex. 3, p. 6) Petitioner was in a dating relationship with the victim in this matter. Petitioner explained that he used a key that he

had been previously given by the victim to enter her home and found her in bed, naked, with another man. Petitioner became overwhelmed with emotion and attempted to leave the residence. The victim walked up behind him as he neared the door and placed her hand on his back. At that time, the Petitioner lost control emotionally and slapped the victim in the face with his hand. The damage to property occurred due to a lamp shade being knocked off a nightstand and breaking. These charges were dismissed and expunged.

ii. Petitioner was 21 years old at the time of the commission of this offense and therefore N.C. Gen. Stat. §17E-12(b) is not applicable.

iii. This offense is a Class B misdemeanor as to the assault on a female and the breaking and/or entering. Injury to personal property is a Class A misdemeanor.

e. Driving while impaired

i. Petitioner was charged with driving while impaired and aggressive driving in Brunswick County on or about April 2, 2016. (Resp't Ex. 3, p.8) Petitioner had just left a bar on Ocean Isle Beach Rd. when he was stopped by a Brunswick County Deputy. Petitioner later blew a 0.18, however it is not clear if this was a breathalyzer test or portable breath test (PBT). Petitioner admitted that he had been drinking and indicated he had been consuming alcohol more often than he should have been due to personal struggles. This charge was dismissed and expunged. The matter was later dismissed in court and Petitioner had it expunged from his record on October 13, 2020.

ii. Petitioner was 30 years old at the time of the commission

of this offense and therefore N.C. Gen. Stat. §17E-12(b) is not applicable.

iii. This offense is a Class A misdemeanor.

f. Possession of drug paraphernalia

i. Petitioner was charged with possession of heroin, possession of drug paraphernalia, and possession of an open container of alcohol in Onslow County on June 11, 2016. These charges were later dismissed and expunged from the Petitioner's record. (Resp't Ex. 3, p.9) Petitioner admitted himself into a treatment facility afterward. (Resp't Ex. 4, p. 4) Petitioner had the charges expunged from his record on January 13, 2022.

ii. Petitioner was 30 years old at the time of the commission of this offense and therefore N.C. Gen. Stat. §17E-12(b) is not applicable.

iii. Possession of heroin and drug paraphernalia is a Class B misdemeanor. Possession of an open container of alcohol is a Class A misdemeanor.

g. Misdemeanor larceny

i. Petitioner was charged with misdemeanor larceny in New Hanover County on October 25, 2016. (File # 16CR058857) (Resp't Ex. 3, p.7) Petitioner, while working at a car dealership in Wilmington, North Carolina, stole a tool and sold it to subsidize his substance abuse problem. The charges were later dismissed and expunged on March 8, 2021. (Resp't Ex. 4, p.7)

ii. Petitioner was 30 years old at the time of the commission of this offense and therefore N.C. Gen. Stat. §17E-12(b) is not applicable.

iii. This offense is a Class B misdemeanor.

5. Investigator Piland interviewed Petitioner on February 23, 2024. During

the interview, Petitioner was cooperative and provided details to the extent that he recalled what happened during these incidents. (Resp't Ex. 9) Investigator Piland also spoke with Major Sammy Turner of the Brunswick County Sheriff's Office. Major Turner told Investigator Piland the Petitioner was "... one of my best, one hell of an employee" and further indicated he would help in any way he could to keep him on staff. (Resp't Ex, 9, p.1)

6. The results of Piland's investigation were provided to Respondent's Probable Cause Committee, which found probable cause to deny Petitioner's application for detention officer certification based on grounds that Petitioner had committed a combination of four or more Class A and B misdemeanors. Written notification of that finding was provided to Petitioner. (Resp't Ex. 5)

Petitioner's Evidence

7. Petitioner testified in the hearing of this matter. Petitioner introduced his work evaluations for the years of 2023-24 in which he was rated in the high scale. (T pp. 26-27) Petitioner also introduced a letter from Potter's Wheel Ministries showing completion of their substance abuse program. (T p. 28)

8. Petitioner explained that his substance use issues began after he had been prescribed narcotic painkillers after a car accident. (T p. 28) After becoming sober for years, Petitioner became a certified peer support specialist. (T p 30) He is no longer employed with the Sheriff's Office. He was "let go" after he was charged in early 2025 with misdemeanor crime of domestic violence. (T p. 32)

9. Petitioner admitted to each of the convictions on his record and admitted to committing the remaining offenses that were identified in the probable cause letter. (T p. 33)

10. Petitioner testified that each of the offensives that occurred, apart from the assault on his girlfriend, were all drug related because of his issues with substance abuse and addiction.

11. Petitioner indicated that at the time of his application for certification with Brunswick County, he had been sober for five years. Petitioner testified that he has made significant changes in his life and is no longer the person who committed

the offenses alleged in this matter. (T p. 33)

12. Petitioner admitted that he had been charged with assaulting his now wife for an incident that occurred earlier in 2025. Those charges had been dismissed and are outside of the allegations identified in his denial letter. Petitioner admitted that alcohol was involved in that incident and that he had been drinking weekly up to the time of his arrest for assault on a female.

13. After his arrest, Petitioner voluntarily went to a treatment program where he stayed for 90 days.

14. Petitioner made admissions to having consumed alcohol recently, however he also testified that he and his wife had recently decided to remove all alcohol from their lives. (T pp. 38-39).

CONCLUSIONS OF LAW

1. The Office of Administrative Hearings ~~has~~ had jurisdiction over this contested case pursuant to N.C. Gen. Stat. § 150B, Article 3A, following Respondent's request under N.C. Gen. Stat. § 150B-40 (e) for an Administrative Law Judge to hear this contested case. In such cases the Tribunal sits in the place of the agency and issues a proposal for decision, which contains findings of fact and conclusions of law. Respondent makes the final agency decision.

2. All parties ~~are~~ were properly before the Office of Administrative Hearings, and there is no question as to joinder or misjoinder. There was no objection from either party to the Tribunal hearing this contested case.

3. To the extent that the Findings of Fact contain Conclusions of Law, and vice versa, they should be so considered without regard to their given labels. *Charlotte v. Heath*, 226 N.C. 750, 755, 440 S.E.2d 600, 604 (1946).

4. Respondent has authority granted by Chapter 17E of the General Statutes and the Administrative Code to certify sheriffs and to revoke, suspend, or deny such certification under appropriate circumstances.

5. Respondent may revoke, suspend or deny the certification of a justice officer when the Commission finds that the applicant for certification or the certified officer has committed or been convicted of "any combination of four or more crimes

or unlawful acts defined in 12 NCAC 10B .0103(17)(a) as a Class A misdemeanor or defined in 12 NCAC 10B .0103(17)(b) as a Class B misdemeanor regardless of the date of commission or conviction." 12 NCAC 10B .0204(d)(5).

6. The Administrative Code defines a Class A Misdemeanor, in pertinent part, as

> an act committed or omitted in violation of any common law, duly enacted ordinance or criminal statute of this state which is not classified as a Class B Misdemeanor pursuant to Sub-item (17)(b) of this Rule. Also specifically included herein as a Class A Misdemeanor is the offense of driving while impaired, 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)]. All other traffic offenses under Chapter 20 (motor vehicles) are not classified as Class A Misdemeanors.

12 NCAC 10B .0204(d)(5).

7. The Administrative Code likewise defines a Class B Misdemeanor as

> an act committed or omitted in violation of any common law, criminal statute, or criminal traffic code of this state which 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 and shall automatically include any later amendments and editions of the incorporated material as provided by G.S. 150B-21.6 . . . .

12 NCAC 10B .0103(17)(b)(i).

8. The Respondent's Class B Misdemeanor Manual includes:

   a. Misdemeanor larceny N.C.G.S. 14-72
   b. Possession of drug paraphernalia N.C.G.S.14-113.22
   c. Assault on a female N.C.G.S. 14-33. (Resp't Ex. 8)

9. The remaining charges and/or convictions are Class A misdemeanors.

10. The sanction for the commission or conviction of four or more Class A and Class B Misdemeanors is contained in 12 NCAC 10B .0205(3)(d), which provides that when the Commission suspends, revokes, or denies the certification of a justice officer, the period of sanction shall be

> for an indefinite period, but continue so long as the stated

> deficiency, infraction, or impairment continues to exist, where the cause of sanction is ... commission or conviction of offenses as specified in 12 NCAC 10B .0204(d)(2)(3)(4) and (5) . . . .

12 N.C.A.C. 10B .0205(3)(d).

11. Here, a preponderance of the evidence exists to conclude that Petitioner stands in violation of 12 NCAC 10B .0204(d)(5) due to his convictions for ~~felonious~~ misdemeanor larceny, misdemeanor solicitation to obtain property by false pretense, and the commission of the offenses of shoplifting, assault on a female, driving while impaired, possession of drug paraphernalia, and misdemeanor larceny.

12. Nevertheless, the Administrative code further states that

> [t]he Commission may either reduce or suspend the periods of sanction where revocation, denial, or suspension of certification is based upon a finding of a violation of 12 NCAC 10B .0204(d) or substitute a period of probation in lieu of revocation, suspension, or denial following an administrative hearing. This authority to reduce or suspend the period of sanction may be utilized by the Commission when extenuating circumstances brought out at the administrative hearing warrant such a reduction or suspension.

Id.

13. "Extenuating circumstances" in the context of justice officer certification in North Carolina refer to specific factors or situations presented during an administrative hearing that justify a deviation from the standard sanctions outlined in the regulation.

14. Although Petitioner presented evidence of remorse for his past conduct, favorable work evaluations, and that he has made efforts to obtain treatment for substance abuse, the Administrative Law Judge ~~Tribunal~~ concluded and the Commission holds ~~concludes~~ that these considerations do not constitute sufficient extenuating circumstances to warrant reducing the sanction of denial of certification at this time. *See* 12 NCAC 10B .0205(3)(d) (providing that the period of sanction shall continue "so long as the stated deficiency, infraction, or impairment continues to exist

. . ."). The Administrative Law Judge concluded and the Commission holds ~~Tribunal concludes~~ that substance abuse contributed to the offenses forming the basis for denial of Petitioner's certification, and that Petitioner has engaged in recent substance-related conduct which resulted in an arrest. The proximity of this conduct in time to the hearing diminishes the mitigating value of Petitioner's evidence and does not warrant a reduction of the sanction.

15. Pursuant to 12 NCAC 10B .0205(3)(d), the sanction for Petitioner's violation is denial for an indefinite period. Accordingly, Petitioner's application for justice officer certification is subject to denial by Respondent.

~~PROPOSAL FOR DECISION~~ ORDER

NOW, THEREFORE, based on the foregoing Findings of Fact and Conclusions of Law, it is hereby ~~proposed that Respondent **AFFIRM** the decision of its Probable Cause Committee regarding Petitioner's certification.~~ that Petitioner's justice officer certification is denied indefinitely.

IT IS SO ORDERED.

This the _____ day of December, 2025.

Alan Norman, Chair
North Carolina Sheriffs' Education and Training Standards Commission

CERTIFICATE OF SERVICE

The undersigned does hereby certify that a copy of the foregoing **PROPOSED FINAL AGENCY DECISION** has been duly served upon the **Counsel to the Petitioner** by mailing a copy to the address below:

Barry Henline
The Law Offices of Barry K. Henline, PLLC
Post Office Box 15862
Wilmington, North Carolina 28408

This the 12th day of November, 2025.

JEFF JACKSON
Attorney General

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