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MEMORANDUM

To: Executive Action Committee, Task Force for Racial Equity in Criminal Justice
Chair, Sergeant Billy Gartin

CC: Attorney General Josh Stein, Justice Anita Earls

From: Leslie Cooley Dismukes, NCDOJ Criminal Bureau Chief, Executive Action
Committee Substantive Staff Lead

Date: March 9, 2021

Re: TREC Recommendations to Standards Commissions

The Commission “bucket” contains eleven recommendations for action by the Standards Commissions. Some of these recommendations will require changes by the Commissions to the North Carolina Administrative Code, and some will require policy study or best practice statements. Below, I have summarized my suggestions regarding the approach to the Commissions to begin to address these matters.

Approach

There are several areas where the TREC recommendations align, at least in part, with the recommendations of the Sheriffs’ Association and the Association of Chiefs of Police. When presenting our recommendations to the Commissions we should highlight these areas of agreement as indicating immediate action can be taken. As a member of the Criminal Justice Education and Training Standards Commission I am happy to present these ideas to the Planning and Standards Committee, which I chair. Practically speaking, requests for rules revisions come in to either Planning and Standards or Education and Training. Given that Chief Davis and Sergeant Gartin both sit on the Planning and Standards Committee with me, I feel that this is the best place to start in the CJ Commission. We no longer have a member of the Sheriffs’ Standards Commission on TREC, so I believe that a group of us will need to request time to speak at the upcoming Sheriffs’ Standards Commission meeting. I will coordinate with Director Konopka to determine how best to secure an appearance.

Timeline

Both Commissions meet quarterly. In terms of rulemaking, it takes several meetings to work through the process. With regards to the CJ Commission, I could foresee our requests being considered along this timeline:

- May 19-21 – present ideas for rules revisions to Planning and Standards Committee. This will require the Committee to vote to request that staff draft language for rules revisions.
- August 11-13 – the Planning and Standards Committee could consider the draft language and request rulemaking authority from the Full Commission
- November 17-19 – the Planning and Standards Committee would conduct a public Rulemaking Hearing on the rules for which it previously was granted rulemaking authority.
- Rules would have an effective date in 2022.
- Sheriffs’ Standards meets on June 10-11, September 9-10, and December 9-10, and I believe they have a similar process.

Administrative Code Revisions

Recommendations 40, 41, 42, 44, 45, 54, and possibly 57, will require action on the part of the Commissions to revise the Administrative Code. These recommendations all concern either the minimum standards required for law enforcement officers or the ability to suspend, revoke, or deny certification. **Recommendation 54** indicates the need for the minimum standards to be consistent across both Commissions so that LEOs in NC are all held to the same standards. I believe there is support for this proposition by the Associations and by the CJ Commission at this point. The other provisions for which we would request revision are as follows:

- 12 NCAC 09B .0101 – Minimum Standards for Criminal Justice Officers¹
 - Add a provision as subsection (3)(i) which states “not engage in excessive or unjustified use of force or abuse of power of the position.” (**Rec 40**)
 - Amend subsection (6) to repeat psychological evaluations after either a certain number of years or before promotion. (**Rec 45**) The CJ Commission just recently voted on a rule further clarifying what psychological screening is necessary pre-employment for all criminal justice officers. TREC support of these rules revisions is consistent with **Recommendation 44**.
 - Add subsection (8)(f) to require notification by both the officer and the agency of specific use of force incidents. (**Rec 42**) Commissions to define use of force to ensure that what is captured is most serious conduct. Note that the CJ Commission recently considered and voted down a new subsection requiring notification of instances where officers had been told by a prosecutor, judge, or agency head that they could not testify due to issues with truthfulness. The Commission is likely going to reconsider adding this provision in the future, which would dovetail with many of the other recommendations made by TREC.
- 12 NCAC 09A .0204 – Suspension: Revocation: or Denial of Certification (criminal justice officers)
 - It may not be necessary to amend this provision if 09B .0101 is amended to add use of force to minimum standards because (b)(1) provides for suspension, revocation,

¹ Note that individuals certified by the CJ Commission are “criminal justice officers” as defined in N.G.G.S. § 17C-2(3), while individuals certified by the Sheriffs’ Commission are “justice officers” as defined in N.C.G.S. § 17E-2(3).

- or denial for failure to meet or maintain minimum standards, which would include the amended use of force guidelines. **(Rec 41)**
 - If revision is still necessary, the Commission could consider revising to add use of force as subsection (b)(17)
- 12 NCAC 10B .0301 – Minimum Standards for Justice Officers
 - Add subsection (7)(F) to require notification by both the officer and the agency of specific use of force incidents. **(Rec 42)**
 - Add a provision as subsection (11) which states “not engage in excessive or unjustified use of force or abuse of power of the position.” **(Rec 40)**
 - Add subsection (12) to track the language used by the CJ Commission for psychological screenings, which are not currently required by the Sheriffs’ Commission. **(Recs 44 & 45)**
- 12 NCAC 10B .0204 - Suspension: Revocation: or Denial of Certification (justice officers)
 - It may not be necessary to amend this provision if 10B .0301 is amended to add use of force to minimum standards because (b)(2) provides for suspension, revocation, or denial for failure to meet or maintain minimum standards, which would include the amended use of force guidelines. **(Rec 41)**
 - If revision is still necessary, the Commission could consider revising to add use of force as subsection (b)(6)

The Task Force has also recommended certain changes to Mandatory In-Service Training. **(Rec 57)** There is currently legislation pending to allow the Commissions to determine MIST topics outside of the rulemaking process. If that legislation passes, it will not be necessary to conduct rulemaking to implement the Task Force’s recommendations, rather, the Commissions can consider and require MIST topics as necessary. It is possible that additional MIST topics could be added to Chapters 17C and 17E, at which point the Task Force’s recommendations would be binding on the Commissions.

Policy and Best Practices Actions

The Task Force also recommended several policy and best practice items for the Commissions to consider. I would propose to address these as follows:

- **Recommendation 27** – Adopt a mandatory statewide policy on law enforcement facilitation of peaceful demonstrations.
 - It is unclear that the Commissions have the power to mandate policy statewide with respect to protest response. The Commissions are tasked with regulating minimum standards for the profession, regulating training, and implementing certain reporting requirements. They typically do not address broader policy issues through rulemaking, however, they have at times put together committees to look at policy issues, which is probably what we should request here.
 - I would suggest, however, that we refrain from making this request of the Commissions before the Policy Bucket group can gather information on best practices and convene stakeholders to discuss. It may be that the Associations, in addition to the Commissions, and NCLEA are the appropriate group to help the Task Force meet this objective.

- **Recommendation 55** – Require law enforcement agencies of a certain size to create a diversity task force.
 - This recommendation may also benefit from convening a group of stakeholders to discuss as it is unclear that the Commissions have the authority to mandate this action. That said, this could be something to consider requesting of the NCLEA, as it is likely they could make this part of their accreditation criteria.

Other

Two other Task Force recommendations fall within the purview of the Commissions.

- **Recommendation 43** – Increase transparency about officer discipline and decertification through a publicly available database.
 - The CJ Standards Division of DOJ has already taken steps to implement this recommendation. Information regarding revocation and suspension data is currently publicly available here: <https://ncdoj.gov/officer-search/>.
 - The database only includes that information that is considered a public record under current law. The TREC recommendation seems to be broader than this, but in order for additional information to be available publicly there will have to be revisions to the public records laws.
 - There is also a need for additional funding for staff to maintain this database and keep it current. This need will be greater if the category of information is expanded by legislation
 - It is possible that there may be a way to collect information that is not publicly available but may be available to other law enforcement agencies to help prevent the wandering officer issue. Research will need to be done regarding how this idea may be impacted by the public records laws.
- **Recommendation 46** – Strengthen the ongoing development of a statewide law enforcement accreditation program.
 - NCLEA is already well underway, and members of the Task Force staff have been in close contact with the NCLEA Committee to ensure that Task Force concepts are being considered and incorporated where possible. This will be an ongoing relationship and will likely develop over time, for example, as North Carolina considers whether to make NCLEA mandatory for all agencies.
 - The Commissions play a role in NCLEA as many members sit on the Committee and make recommendations for concepts to be incorporated. Both Commissions are already committed to this concept and I don't believe further presentation will be necessary on this issue.

Next Steps

I would propose that staff create a presentation for the Commissions to move forward in the timeline noted above. If the Committee approves, I will reach out to Director Konopka and Acting Director Squires and secure time before both Commissions to present the TREC recommendations.