

## **MINUTES**

### **North Carolina Criminal Justice Education and Training Standards Commission**

#### **Planning & Standards Committee**

**November 28, 2018**

The Planning & Standards (P&S) Committee of the NC Criminal Justice Education and Training Standards (CJETS) Commission met at Wake Technical Community College, Public Safety Center, in Raleigh on November 28, 2018 at 10:00am.

#### **Committee Members Present**

Commissioner Jeff Welty (Chair), Commissioner Richard Epley, Commissioner Trey Robison, Commissioner Robert Hassell, Commissioner Brent Herron, Commissioner Randy Byrd, Commissioner Cerelyn Davis, Commissioner Leslie Cooley-Dismukes

#### **Guests Present**

Director Trevor Allen, NCJA, Thomas Forrest, Pitt CC, Commissioner Tracy McPherson, NC Community Colleges, Commissioner Stephanie Freeman, DACJJ, Monica Shabo, DACJJ, Demetrius Pulley, DPS-OPSP, Elizabeth Musto, DPS-OPSP, Tami Warren, NCJA

#### **CJ Standards Staff Present**

Steven Combs, Michelle Schilling, Richard Squires, Kim Pulley, Charminique Williams, Jason McIntyre. Dawn Suffel

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#### **Call to Order**

Committee Chair Jeff Welty called the meeting to order and declared a quorum.

#### **Election of Committee Vice-Chair**

<p><b>Motion</b> to elect Commissioner Cooley-Dismukes as Committee Vice-Chair was made by Commissioner Byrd and <b>seconded</b> by Commissioner Epley. <b>Motion carried.</b></p>
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#### **Approval of Minutes**

<p><b>Motion</b> to approve the August 2018 committee minutes was made by Commissioner Cooley-Dismukes and <b>seconded</b> by Commissioner Epley. <b>Motion carried.</b></p>
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#### **Interpretive Rule**

Ms. Stephanie Freeman, DPS, Director of Office of Staff Development & Training (OSDT) requested a change to the interpretive rule for a new job title, "Chief of Special Operations," that will be given to the person heading its Special Operations and Intelligence Unit (SOIU). The SOIU will collect information from both correctional

institutions and community corrections, and the person heading the unit may come from either background, but should remain subject to the Commission's jurisdiction. Therefore, DPS/DACJJ requested that the new title be listed under both the Correctional Officer and the Probation/Parole Officer sections of the rule.

**Motion** to correct language on page 1 under definition of Sworn Law Enforcement Officer, line 2 should change to "by virtue of his/her office" was made by Commissioner Byrd and **seconded** by Commissioner Hassell. **Motion carried.**

**Motion** to amend the interpretive rule by adding job title "Chief of Special Operations" under both the Correctional Officer and the Probation/Parole Officer sections of the rule and seek approval by the full Commission was made by Commissioner Cooley-Dismukes and **seconded** by Commissioner Davis. **Motion carried.**

### **Rules Review Commission/Status of Rule Amendments**

Chairman Welty explained that at the August meeting, the Commission voted for 18 amendments to our rules. The Rules Review Commission (RRC) accepted 15 of the changes but came back with concerns about the other three rules, as follows:

*12 NCAC 09B .0101 (MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS)*. Change submitted involved a correction to a legal case citation. The RRC identified other issues with the rule, including that it refers to a repealed statute, former G.S. 20-139 (driving under the influence of drugs). In order to address those concerns, the rule is included in today's rule-making hearing. **[See Rule-Making Hearing.]**

*12 NCAC 09G .0304 (GENERAL CERTIFICATION [CORRECTIONS])*. Rule currently provides that "certified officers who, through promotional opportunities, move into non-certified positions within the Department, may have their certification reinstated without re-completion of . . . basic training." The change submitted would have allowed an officer who moved into a non-certified position for non-disciplinary reasons, whether the move was "promotional" or not, to come back to a certified position without going back through basic training. The RRC was concerned that both the existing and the revised rule states that the employees "may" have their certifications reinstated, which suggests that they also may not, and the rule does not say what factors would govern such a decision. DPS/DACJJ informed the committee that they would like to withdraw the current request and further review what the rule specifically needs to communicate.

**Motion** to withdraw amendment to 09G. 0304 that was approved at our August meeting and forward for agreement by the full Commission was made by Commissioner Byrd and **seconded** by Commissioner Epley. **Motion carried.**

*12 NCAC 09G .0103 (RULE-MAKING AND ADMINISTRATIVE HEARING PROCEDURES [CORRECTIONS])*. Rule addresses what a person needs to submit to the Commission when requesting a rule change – things like name, draft of and reason for proposed change, as well as procedures for contested cases, including a time limit for how long an officer has to request an administrative hearing. The change submitted was to the timeline reducing it from 60 days; the relevant statute requires a 30-day limit. The RRC had concerns regarding what a person needs to submit when requesting a rule change and does not deem that the requirements in the rule are permitted by the statutes governing administrative rulemaking. Committee staff and legal counsel recommends to pattern our rules with comparable sheriffs' rules, which have one rule about rule change proposals and a separate rule about administrative hearings.

The committee recommends changing these rules to properly address concerns raised by the RRC in connection with 09G .0103 as described above. Committee further agrees with the recommendation of staff and counsel that the Commission should divide 09A .0107 into two rules, with .0107 addressing procedures for rule change requests and .0207 addressing administrative hearing procedures and timelines; make it optional to submit, when requesting a rule change, the various items of information listed in .0107; and repeal 09G .0103, which is identical to 09A .0107 and therefore unnecessary.

**Motion** to withdraw amendment to 09G .0103 that was approved at our August meeting, repeal 09G .0103 and to seek rule-making authority to amend corresponding rule 09A .0107 and forward for agreement by the full Commission was made by Commissioner Cooley-Dismukes and **seconded** by Commissioner Hassell. **Motion carried.**

### **Rule-Making Hearing**

Under separate cover.

### **Requests for Rule Making Authority**

Deputy Director Richard Squires brought the additional following rules before the committee to request amendments ---

- 12 NCAC 09B .0301 (CERTIFICATION OF INSTRUCTORS)
- 12 NCAC 09G .0307 (CERTIFICATION OF INSTRUCTORS [CORRECTIONS])
- 12 NCAC 09B .0503 (SUSPENSION: REVOCATION: DENIAL/SCHOOL DIRECTOR CERTIFICATION)
- 12 NCAC 09G .0407 (SUSPENSION: REVOCATION: DENIAL/SCHOOL DIRECTOR CERTIFICATION [CORRECTIONS])

Mr. Squires explained proposed changes would define instructor conduct and sanctions for violating rules involving instructors who are certified through another entity (such as the NC Fire Commission or another state's law enforcement commission) cannot serve as instructors for Commission-governed courses if they lose their certifications. Secondly, it would clearly state that instructors and school directors cannot have romantic/sexual relationships with BLET or basic corrections trainees. Mr. Thomas Forrest, BLET school director (Pitt CC) asked the committee to consider also including Qualified Assistants (QAs) as entity who cannot have relationships with trainees.

**Motion** to request rule-making authority from the full Commission to amend these four rules was made by Commissioner Epley and **seconded** by Commissioner Byrd. **Motion carried.**

- 12 NCAC 09C .0307 (AGENCY RETENTION OF RECORDS OF CERTIFICATIONS)
- 12 NCAC 09G .0306 (RETENTION OF RECORDS FOR CERTIFICATION [CORRECTIONS])

Mr. Squires explained the need for several changes to the law enforcement and corrections rules regarding agencies' retention of records relating to officers' certifications. The goal is to make sure that agencies keep all the critical records relating to officers' certifications in case there are questions about them, and that they retain them for the period required by the records retention schedules declared by the Department of Cultural Resources.

**Motion** to request rule-making authority from the full Commission to amend these two rules was made by Commissioner Byrd and **seconded** by Commissioner Hassell. **Motion carried.**

### Open Issues

#### ***CORRECTIONS IN-SERVICE TRAINING***

Committee heard a report from Deputy Director Squires regarding how annual in-service training is handled by DACJJ. The Committee expressed interest in revisiting the issue in the future to evaluate whether parallel training requirements should be required by the Administrative Code for DACJJ as it is for law enforcement officers.

#### ***CRIMINAL HISTORY/BLET PARTICIPANTS***

Committee heard a second report from Mr. Squires regarding the procedure that BLET participants must follow to provide information about their criminal history. Currently, participants must request certified copies of their criminal records from every jurisdiction in which they've lived. The cost, time, and inconvenience can be significant and school directors have expressed concerns. Committee expressed interested in revisiting in the future. Staff will look further into solutions concerning cost and timeliness, what other states do and whether there is a single source alternative, with plan for staff to report back to the Committee.

#### ***FIELD TRAINING LEO***

Committee heard a report from Director Steven Combs regarding whether field training should be mandatory for new officers. Mandating field training was an objective of the Eighth System Plan but has not yet been met. Director Combs noted that many larger agencies require it by agency policy and that it may be difficult or expensive for smaller agencies. Based in part on liability concerns, the Committee asked staff to come back in February with some recommendations for ways that field training could be required while still being mindful of the challenges facing small agencies.

#### ***NC LEO ACCREDITATION PROGRAM***

Director Combs came before the Committee with a proposal for a North Carolina Law Enforcement Accreditation Program. It would be a Commission-administered voluntary program that agencies could join for a modest fee. The Commission would then use teams of volunteers to ensure that each member agency had appropriate policies and procedures in place regarding issues like pursuits, use of force, and evidence retention, and that each member agency was following its procedures. The result would be similar to CALEA, but established in North Carolina and more affordable.

**Motion** to recommend that the full Commission approve the program, subject to statutory authority and budget support for administrative position(s) that would be required to operate the program was made by Commissioner Hassell and **seconded** by Commissioner Herron. **Motion carried.**

#### ***SYSTEM PLAN – 9<sup>TH</sup> EDITION***

Committee reviewed the current draft of the Ninth Edition System Plan. The draft was circulated to the full Commission following our August meeting and no objecting feedback was received.

**Motion** to adopt the Ninth System Plan as written and forward for approval by the full Commission was made by Commissioner Cooley-Dismukes and **seconded** by Commissioner Herron. **Motion carried.**

### Adjournment

**Motion** to adjourn at approximately 2:00 p.m. was made by Commissioner Byrd and **seconded** by Commissioner Epley. **Motion carried.**

## **RULE-MAKING HEARING RULES REVISIONS**

**North Carolina Criminal Justice Education and Training Standards Commission  
November 28, 2018**

### **Call to Order**

The Planning & Standards (P&S) Committee of the North Carolina Criminal Justice Education and Training Standards Commission met at the Wake Technical Community College, Public Safety Center on November 28, 2018. This committee presided over the public rulemaking hearing with Committee Chair Jeff Welty calling the hearing to order at 10:40 am. Commissioner Welty stated the purpose of the hearing is to receive remarks from any persons interested in commenting on the proposed amendments to the Commission's Administrative Rules.

### **Committee Members Present**

Commissioner Jeff Welty (Chair), Commissioner Richard Epley, Commissioner Trey Robison, Commissioner Robert Hassell, Commissioner Brent Herron, Commissioner Randy Byrd, Commissioner Cerelyn Davis, Commissioner Leslie Cooley-Dismukes

### **Guests Present**

Director Trevor Allen, NCJA, Thomas Forrest, Pitt CC, Commissioner Tracy McPherson, NC Community Colleges, Commissioner Stephanie Freeman, DACJJ, Monica Shabo, DACJJ, Demetrius Pulley, DPS-OPSP, Elizabeth Musto, DPS-OPSP, Tami Warren, NCJA

### **CJ Standards Staff Present**

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## **PUBLIC HEARING**

Commissioner Jeff Welty advised that proposed amendments would be read and, if needed, the amendments would be explained by staff and stated that after the rules are presented and explained, anyone wishing to comment would be allowed to do so. Mr. Welty read into the record the proposed rule amendments.

### **Rule-Making Hearing**

The Committee conducted a rule-making hearing on two proposed rule revisions ---

- 12 NCAC 09B .0101 (MINIMUM STANDARDS FOR CRIMINAL JUSTICE OFFICERS)
- 12 NCAC 09G .0302 (NOTIFICATION OF CRIMINAL CHARGES/CONVICTIONS [CORRECTIONS])

Both rules address officers' obligations to report arrests, criminal charges, 50B [domestic violence] orders, and the like. Both proposed revisions would clarify those obligations by more clearly stating how quickly

various events must be reported and to whom. The committee agreed with the general idea of the revisions, but noted several drafting concerns, including references to “executive officer” in place of “agency head” and references to “Giglio” that are not fully defined. Accordingly, the committee chose not to change any rules at this time.

**Motion** to withdraw as written with request for staff to address mentioned concerns regarding “executive head” in place of “agency head” and “Giglio” was made by Commissioner Byrd and **seconded** by Commissioner Cooley-Dismukes. **Motion carried.**

Commissioner Welty stated for the record that there were no other written comments or objections received by the rulemaking coordinator concerning any changes today. Mr. Welty called an end to the rulemaking hearing.