

Notice of Rulemaking Hearing

NOTICE is hereby given that the Nebraska Commission on Law Enforcement and Criminal Justice will hold a rule-making hearing pursuant to Neb. Rev. Stat § 84-907 on the 20th day of January 2023 at 9:30 a.m. to be held in the public hearing room located at the Nebraska State Patrol Office Building, 4600 Innovation Drive, Lincoln, Nebraska.

The purpose of the hearing is to take testimony and evidence about revisions to the existing Chapter 8 of Title 79 Law Enforcement-Police Standards Advisory Council. Chapter 8 revisions reflect changes to the admission criteria since the creation of noncertified conditional officers and the elimination of conditional appointed officers. Additionally, the admission criteria have been changed to reflect changes in society since the last approval of Chapter 8. In particular, home school graduates will now meet the criteria of a high school graduate. Additionally, individuals who can provide the required medical examinations has been expanded to include Physician Assistants (PAC) or Advanced Practice Registered Nurses. Other revisions represent making more certain the admission requirements and modification of the existing standards.

Draft or working copies of the proposed rules are available at the offices of the Secretary of State, Regulations Division, Room 343, State Capitol, Lincoln, NE 68509. The description of the fiscal impact may be inspected and obtained at the Nebraska, 301 Centennial Mall South, P.O. Box 94946, Lincoln, Nebraska 68509.

All interested persons may attend and testify orally or by written submission at the hearing. Interested persons may also submit written comments prior to hearing, which will be made part of the hearing record at the time of hearing if received by the Nebraska Commission on Law Enforcement and Criminal Justice on or before January 6, 2023. If auxiliary aids or reasonable accommodations are needed to participate in the hearing, please call the Crime Commission, (402) 471-2194, by no later than January 6, 2023.



Signature of Dr. Don Arp, Jr.
Executive Director
Nebraska Crime Commission

DRAFT/FINAL FISCAL IMPACT STATEMENT

Agency: Nebraska Commission on Law Enforcement and Criminal Justice	
Title: 79	Prepared by: David A. Stolz
Chapter: 8	Date prepared: 10/17/22
Subject: TRAINING ACADEMY ADMISSION QUALIFICATIONS AND PROCEDURES	Telephone: (308) 258-0218

Type of Fiscal Impact:

	State Agency	Political Sub.	Regulated Public
No Fiscal Impact	(x)	(x)	(x)
Increased Costs	()	()	()
Decreased Costs	()	()	()
Increased Revenue	()	()	()
Decreased Revenue	()	()	()
Indeterminable	()	()	()

Provide an Estimated Cost & Description of Impact:

State Agency:

Political
Subdivision:

Regulated
Public:

If indeterminable, explain why:

TITLE 79 - LAW ENFORCEMENT - POLICE STANDARDS ADVISORY COUNCIL

CHAPTER 8 - TRAINING ACADEMY ADMISSION QUALIFICATIONS AND PROCEDURES

001 Purpose - To establish admission qualifications and procedures for applicants who want to attend certification training at training academies.

002 Scope - All applicants and law enforcement agencies requesting admission for the applicant to attend law enforcement basic, reserve, or Reciprocity certification training or other mandated training at a Training Academy.

003 Reference – ~~State Statutes, §81-1410, §81-1411, §81-1412, §81-1414~~ and Title 79, Chapter 2

004 General Applicant(s) requesting admission to certification training and other mandated training programs at a Training Academy must meet the minimum qualifications for admission and certification as specified below. ~~These qualifications are the minimum qualifications required for entrance into a Training Academy and for certification. Hiring a Agencies, which conduct their own academy training, may set higher standards for entrance into that academy. a Training Academy and for certification.~~ Hiring agencies may set higher standards for employment of their respective employees. Applicants must follow the procedures listed herein to be eligible to attend the mandated training as specified.

005 Basic Certification Training

005.01 Minimum Qualifications For ~~Basic and Reciprocity~~ Law Enforcement Certification Training. Prior to appointment or attending a Training Academy for certification training, an applicant ~~shall~~ must meet the following qualifications:

005.01A The applicant is ~~either or will be~~ a citizen of the United States. ~~prior to the completion of certification training~~

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~~or is lawfully present in the United States as specified in Neb. Rev. Stat. §4-111 and/or otherwise able to obtain a professional license as specified in Neb. Rev. Stat. §4-111;~~

005.01B The applicant will reach the age of twenty-one years prior to the completion of training.⁷

005.01C The applicant has been fingerprinted and a search has been made of local, state, and national fingerprint files for disclosure of any criminal record and the results furnished to the ~~Training Center~~ Director.⁷

005.01D The applicant has a valid motor vehicle operator's ~~or chauffeur's~~ license.⁷

005.01E The applicant has vision correctable to 20/30 and has no evidence of an irreversible disease, which will affect the person's sight.⁷

005.01F The applicant has ~~been pardoned or~~ has never been convicted by any state, ~~or~~ the United States, or by any foreign government of a crime punishable by imprisonment in a penitentiary for a term of one year or more, ~~or by any foreign government of a crime which would be punishable by imprisonment for a term of one year or more. if committed in Nebraska.~~ An applicant will not be disqualified if such conviction has been overturned or has had a conviction for such an offense overturned or reversed by a court of competent jurisdiction or a pardon has been obtained.

005.01G The applicant possesses good character as determined by a thorough background investigation.⁷

005.01H The applicant (i) is a high school graduate, including a home schooled graduate or (ii) possess a general educational development certificate and (iii) is able to read, write, and understand the English language at the eleventh grade level.⁷

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005.01I The applicant has not been convicted of driving while intoxicated or under the influence in the two years immediately preceding admission. ~~and~~

005.01J The applicant has been examined by a licensed physician, Physician Assistant (PAC) or Advanced Practice Registered Nurse within one year or less prior to admission and has been certified ~~by the physician~~ to have met the physical requirements, as determined by the Council. These requirements are necessary to fulfill the responsibilities of a law enforcement officer and successfully complete the requirements for training.

005.01K The applicant will not have ~~worked~~ been appointed as a law enforcement officer for the current law enforcement agency for more than ~~one year including the time required for certification training,~~ 16 consecutive weeks or has been granted a ~~waiver~~ an extension by the Council as outlined in Neb. Rev. §81-1414, ~~based on extreme hardship by the Council.~~

005.01L The applicant has not received a punitive discharge from the United States Armed Forces. Punitive discharges are discharges classified as Dishonorable or Bad Conduct.

005.01M The applicant has not been denied certification status, had his/her law enforcement certification/license revoked, suspended or currently ~~suspended~~ under investigation and or review in this state or another jurisdiction.

005.01N The applicant has not been convicted of any crime involving the threat of or actual use of physical violence that would constitute a Class I misdemeanor in this state.

005.01O The applicant has not been convicted of any crime involving the threat of or actual sexual assault or abuse.

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005.01P The applicant has not been convicted of any crime involving the threat of or actual use of physical violence or sexual abuse against a child or children.

005.01Q The applicant has not been adjudged or convicted of a crime of domestic violence as defined in the United States Code, 18 U.S.C. 922(g)(9), that would disqualify him/her from possessing a firearm.

005.01R If the applicant has never been employed as a law enforcement officer in Nebraska, he/she will undergo a psychological evaluation to determine fitness for duty.

005.02 Good Character

005.02A The Council finds that a person serving in the capacity of a Nebraska Law Enforcement Officer must be of good moral character. Besides the requirements imposed by sections 005.01A through 005.01Q R, a person of good character is someone who generally can be defined as an individual who:

005.02A1 Does not have a past indicative of incompetence or neglect of duty;

005.02A2 Does not have a past indicative of physical, mental, or emotional incapacity;

005.02A3 Has not been adjudged or convicted of criminal violations with such a frequency so as to indicate a disrespect for the law and rights of others;

005.02A4 Has not been adjudged or convicted of traffic violations of regulations governing the movement of vehicles with such a frequency so as to indicate a disrespect for traffic laws and a disregard for the safety of others; ~~on the highways within the past three years;~~

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005.02A5 Can be characterized as being honest, truthful and trustworthy;

005.02A6 ~~Substance Use~~ Does not have a history of substance ~~abuse~~ use to include:-;

005.02A6a Has not illegally sold, produced, cultivated or transported for sale marijuana or another controlled substance ~~for sale~~;

005.02A6b Has not used marijuana for any purpose in the last ~~two (2) years~~ twelve (12) months; ~~unless the use becomes lawful in the State of Nebraska~~:-;

005.02A6c Has not used marijuana or another controlled substance, other than one prescribed by a physician, while employed or appointed as a peace officer or law enforcement officer;

005.02A6d Has not illegally used any dangerous drugs or narcotics ~~controlled substance not prescribed to the applicant~~, other than marijuana, for any purpose in the last ~~five (5)~~ three (3) years.

005.02B For issues regarding good character, the Director and Council will consider the aggravating circumstances listed in paragraphs 005.02A(1)-(6). A record manifesting a history of one or more of the aggravating circumstances may constitute a finding that the applicant does not possess good character and may constitute a basis for denial of admission into certification training. These factors will be considered in conjunction with the mitigating and/or extenuating circumstances as set out in section 005.03.

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005.03 Mitigating and Extenuating Circumstance Relevant to Good Character.

005.03A While the Council recognizes that there is no exact formula to determine whether an applicant possesses good character, the Council believes that mitigating factors should be considered in conjunction with the aggravating factors in order to determine whether a person has good character. In making this determination of good character, the following factors, although not exhaustive, should be considered in assigning weight and significance to prior conduct: ~~that does not automatically disqualify an applicant for consideration pursuant to State Statute 81-1410:~~

- A. ~~the~~ applicant's age at the time of the conduct;
- B. ~~the recency of~~ how recent was the conduct;
- C. ~~the~~ reliability of the information concerning the conduct;
- D. ~~the~~ seriousness of the conduct;
- E. ~~the~~ factors underlying the conduct;
- F. ~~the~~ cumulative effect of the conduct or information;
- G. ~~the~~ evidence of rehabilitation;
- H. ~~the~~ applicant's positive social contributions since the conduct;
- I. ~~the~~ applicant's candor in the admission process; and
- J. ~~the~~ materiality of any omissions or misrepresentations.

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005.04 Character Affidavits and Background Investigation

All applicants ~~shall~~ will complete the Council's Character Affidavit and a thorough background investigation must be completed for each applicant before the applicant is admitted into a training academy for ~~Basic (or Reserve)~~ law enforcement certification training. The affidavit and the background investigation ~~shall~~ will ~~make inquiry into~~ collect information to determine if the applicant meets the qualifications of the applicant in order to determine if the

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~~applicant meets the qualifications for admission as set out in State Statute 81-1410 and this Chapter.~~

005.04A The rules of the Council for admission into a Training Academy place on the applicant the burden of proving good character by producing documentation, reports, and witnesses in support of the application. Each investigation will be initiated by requiring the applicant to execute under oath a thorough application, and to sign an authorization and release form that extends to the Council, the Director or his/her designee and to any persons or institutions supplying information thereto. The applicant will be informed of the consequences of failing to produce information requested by the application and of making material omissions or misrepresentations.

005.04A1 The Character Affidavit will be in the form of a personal affidavit covering subject matter essential to the determination of whether the applicant meets the admission qualifications as provided by ~~Neb. Rev. Stat. §81-1410~~ statute and this Chapter. Only the Character Affidavit, as approved by the Council, will be utilized by the applicant when applying for admission into a Training Academy for Certification Training.

005.04A2 Applicants are under a duty to disclose any and all information that may affect the applicant's qualifications for entrance into certification training. Any ~~deliberate~~ omissions, falsifications, and/or misrepresentations made on the application or through the application process, including the background investigation, are grounds for denial of entrance into a Training Academy, suspension from training or termination of training.

005.04B Background Investigations

005.04B1 A thorough background investigation is necessary to verify that the applicant meets both the statutory qualifications and the Council qualifications. The background investigation ~~should~~ will include, but not be limited to:

005.04B1(a) Previous employment information;

005.04B1(b) Law enforcement records checks ~~in area(s) of where the applicant's residence;~~ has resided;

005.04B1(c) Review, ~~to include of~~ of military records, ~~of including events and circumstances that resulted in discharges and re-enlistment status from the Armed Forces of the United States. Any discharges that are classified less than Honorable.~~ The following discharge classifications require ~~a thorough~~ additional review during the background investigation:

1. General/Under Honorable Conditions,
2. Under Other Than Honorable Conditions;
3. Uncharacterized;
4. Bad conduct.

005.04B1(d) Verification of at least ~~five (5)~~ three (3) character references, ~~three (3)~~ of which are not family or close personal friends; ~~and~~

~~005.04B1(e) Such other means as deemed necessary and proper by the Council through the Director.~~

005.04B2 ~~The background investigation should~~ will

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be conducted in order to determine if the applicant meets minimum qualifications and should include, but does not have to be limited to:

~~005.04B2(a)-1(e)~~ ~~f~~ Citations, arrests or criminal charges on the applicant's records, regardless of the disposition;

~~005.04B2(b)-1(f)~~ ~~g~~ Any criminal convictions regardless of criminal classification or disposition;

~~005.04B2(c)-1(g)~~ ~~h~~ Misconduct in employment;

~~005.04B2(d)-1(h)~~ ~~i~~ Acts involving dishonesty, fraud, deceit, or misrepresentation;

~~005.04B2(e)-1(i)~~ ~~j~~ Abuse of legal process, including the filing of vexatious lawsuits;

~~005.04B2(f)-1(j)~~ ~~k~~ Neglect of financial responsibilities;

~~005.04B2(g)-1(k)~~ ~~l~~ Neglect of professional responsibilities;

~~005.04B2(h)-1(l)~~ ~~m~~ Violation of a court order, including child supports;

~~005.04B2(i)-1(m)~~ ~~n~~ Evidence of mental or emotional instability incapacity; ~~and~~

~~005.04B2(j)-1(n)~~ ~~o~~ Evidence of a history of drug or alcohol dependence or abuse; ~~and~~

005.04B1(o) Any other means as deemed necessary and proper by the Council through the Director.

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005.04B3-2 The revelation or discovery of any of the preceding ~~should~~ will be treated as cause for further inquiry by the Director and may necessitate a finding before the Police Standards Advisory Council on the issue of whether the applicant possesses the good character and fitness to serve as a law enforcement officer in the State of Nebraska.

005.05 A Background investigation ~~shall~~ will only be conducted by the following individuals or agencies:

005.05A The Director or his/her designee, when the applicant ~~is not employed as a law enforcement officer/trainee~~ has not been hired by a law enforcement agency or when the applicant is a newly elected or appointed a Sheriff or newly appointed agency administrator who is not certified as a Nebraska law enforcement officer at the time of election or appointment.

005.05B The head of the agency or his/her designee that has appointed the applicant as a law enforcement officer; or trainee.

~~005.05C The head of the agency or his/her designee that has hired the applicant as a trainee.~~

005.06 Documentation of background investigation and results of investigation

005.06A Results of Investigation. The individual conducting the background investigation ~~shall~~ will submit to the Council a certification that the applicant meets the admission qualifications ~~under State Statute 81-1410 and~~ in this Chapter, and that a background investigation has been conducted and documented in the agency files along with

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the name(s) of the investigator(s) and dates of the investigation.

005.06B ~~The Council, through the Director, can require an agency submit the entire background investigation for review.~~

006 In order to determine if the applicant can read, write and understand the English language at the eleventh grade level, the applicant ~~shall be~~ is required to complete a test approved by the ~~Council State Department of Education~~ and administered by ~~through~~ the Training Center.

006.01 ~~The Training Center may administer the test Reading, Writing and Understanding the English Language Test (Test of Adult Basic Education) through any of the following methods: Training Academies of the Nebraska State Patrol, Lincoln and Omaha Police Departments, Civil Service and/or Merit Commission's of other law enforcement agencies; State of Nebraska approved GED Examiners; Training Center staff; or as directed by the Council.~~

006.02 ~~The Nebraska State Patrol, Lincoln and Omaha Law Enforcement Training Academies, and Civil Service and/or Merit Commissions of other law enforcement agencies may grade the TABE-T tests and will furnish the written results to the Director.~~

006.03 ~~The costs of the TABE-Testing process will be charged to the applicant or the hiring agency. Applicants failing the TABE Test may retake a different version of the test as soon as they elect, however, ninety (90) days must elapse between the taking of the same version of the test unless permitted upon petition to the Council.~~

~~007 Be examined by a licensed physician within one year or less prior to admission and have been certified to have met the physical requirements, as determined by the Council, necessary to fulfill the responsibilities of a law enforcement officer~~

~~008~~ 007 Application Documentation

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~~008.01~~ All application packets must be received by the Director at least thirty (30) days prior to the first day of the ~~Basic, Reciprocity or Reserve~~ Certification course. Application packets for non-law students who have not been hired by a law enforcement agency, must be received ninety (90) days prior to the first day of the Certification course.

~~008.01A~~ 007.01A For application for admission into the Training Center or into another Training Academy where the applicant is not directly employed by the academy's agency, the application packet must include the following:

1. ~~TC-001~~, Personnel Change-In-Status Report, if employed by an agency-
2. Application for Training
3. Personal Character Affidavit
4. ~~Results of~~ Background Verification form Investigation
5. ~~TC-005~~, Medical Examination and Health Questionnaire
6. ~~TC-006~~, Authority to Release Information
7. ~~TC-084~~ Employment Verification Form
8. Copy of Birth Certificate or recognized substitute
9. Copy of Valid Operator's License
10. Four Fingerprint Cards
11. ~~FABE~~ Reading and Comprehension test results
12. DD Form -214 or equivalent (Applicable only to Veterans)
13. Copy of high school diploma, home school transcript or GED certificate
14. Form I-9, Employment Eligibility Verification
15. Background Check Waiver

~~008.01B~~ 007.01B For application for admission into the applicant's employing Training Academy or an interlocal training academy, the agency must submit ~~must include~~ the following:

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1. ~~TC-001, Personnel Change-In-Status form Report, if employed by an agency~~
2. ~~TC-057 Application for Training Applicant Report for Agency and Interlocal Academies~~
3. Personal Character Affidavit
4. AFIS searched fingerprint cards. Reported records of criminal history check through the Federal Bureau of Investigation.
5. DD Form -214 or equivalent (Applicable only to Veterans).

~~008.02~~ 007.02 Upon receipt of the change in status form, ~~A~~ an applicant shall ~~will~~ be scheduled immediately enrolled in the next available for Basic Training session, ~~no later than two (2) months from the date of hire as a law enforcement officer or trainee.~~

~~008.03~~ 007.03 With prior approval, the thirty (30) day provision in section ~~008.01~~ 007.01 may be waived by the Director. ~~The waiver will be based upon a determination that the application can be processed and accepted as meeting the admission qualifications. without the need for further review by the Council before the start of the certification course. However, the thirty-day provision will not be waived if it will result in a hardship upon the requested Training Academy. No application packet will be accepted less than~~ fourteen (14) days before the beginning of the requested academy.

~~008.03A~~ A hardship may be found when:

1. ~~The applicant's admittance is beyond the budget for conducting that requested certification course;~~
or
2. ~~The applicant's admittance is beyond the resources of an Academy for that requested certification course.~~

~~008.04~~ 007.04 In all cases in which it is necessary for the Council to acquire documents or other information to determine whether or not an applicant meets the admission requirements of this section,

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the Council, through the Director, may require such copies or other information be supplied by the applicant at his or her expense.

~~008.05~~ 007.04 Failure to comply with this section may result in the denial of the applicant's admission into that registered course.

~~009~~ 008 Review by Director and Council Review

~~All documentation as specified in section 008 must be received by the Director no less than 30 days prior to the start of that applicant's requested certification course at the designated Training Academy or 90 days prior in the case of a diploma student.~~

0098.01 The Director or his/her designee ~~shall~~ will review the ~~documentation~~ completed application packet within ~~30-10~~ working days of receipt. The Director ~~shall~~ will make an initial determination of whether the applicant meets the qualifications for admission into a Training Academy for ~~basic or reserve law enforcement~~ certification training. The Director ~~shall~~ will notify the applicant and/or agency in writing of the applicant's acceptance or denial. The denial ~~shall~~ will specify the reasons for denial/disqualification. Upon request of the applicant or agency, the determination by the Director may be appealed according to Title 79 Chapter 13, reviewed at the next available Council Hearing.

~~0098.02~~ Upon request by the applicant or agency, the Council will conduct a hearing in order to determine whether the applicant meets minimum qualifications for admission into a certification course at a Training Academy. During the appeal process, the burden is on the applicant to demonstrate by clear and convincing evidence that he/she meets the admission qualifications. The Council will render a decision and ~~reduce-produce~~ its decision in writing within ninety (90) days ~~two weeks~~ of the hearing unless the time is extended by order of the Chairperson. ~~The burden is on the applicant to demonstrate by clear and convincing evidence that he/she meets the admission qualifications.~~ The decision of the Council is final.

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~~Effective Date:
Revised from June 26, 2005
Revised from December 4, 1999~~