12NCAC 10B .0305 Background Investigation

Public Hearing
July 26, 2022 @ 9:00am
1700 Tryon Park Drive
Raleigh, NC  27610

Instructions for Oral and Written Comments
The public comment period begins on July 16, 2022 and ends on August 30, 2022. Public comments shall be in writing and shall be directed to:

Sirena Jones
North Carolina Department of Justice
Sheriffs’ Education and Training Standards Division
Post Office Box 629
Raleigh, NC  27602-0629

“Public Comment” is defined by NCGS 150B-21.3A(a)(5) as a written objection to all or part of a rule. Additionally, pursuant to NCGS 150B-21.3A(c)(2), in order for the Rules Review Commission to determine whether the public comment has merit, the public comment must address the specific substance of the rule and address any of the standards of Commission review, as set forth in NCGS 150B-21.9(a).

***If approved, this change would become effective January 1, 2023***
**Procedure for Subjecting a Proposed Rule to Legislative Review:**

If an objection is not resolved prior to the adoption of the rule, a person may also submit written objections to the Rules Review Commission. If the Rules Review Commission receives written and signed objections in accordance with G.S. 150B-21.3(b2) from 10 or more persons clearly requesting review by the legislature and the Rules Review Commission approves the rule, the rule will become effective as provided in G.S. 150B-21.3(b1). The Commission will receive written objections until 5:00 p.m. on the day following the day the Commission approves the rule. The Commission will receive those objections by mail, delivery service, hand delivery, or facsimile transmission. If you have any further questions concerning the submission of objections to the Commission, please call a Commission staff attorney at 919-431-3000.

***Statutory Authority for Proposed Rules Changes by the Sheriffs’ Commission is found in NCGS 17E***
12 NCAC 10B .0305 is proposed to be amended as follows:

12 NCAC 10B .0305 BACKGROUND INVESTIGATION

(a) Prior to the background investigation conducted by the employing agency to determine the applicant's suitability for employment and certification, the applicant shall complete the Commission's Personal History Statement (F-3) to provide information regarding his or her former names, education, address(es), family, financial, employment, and military history, as well as any prior criminal or civil charges, actions, or behavior. The information provided on this form shall serve as a basis for the investigation. The Commission-mandated Personal History Statement (F-3) submitted to the Division shall be completed no more than 120 days prior to the applicant's date of appointment. Prior to employment, an agency shall complete a background investigation on all applicants for certification. The investigation shall examine the applicant's character traits and habits relevant to performance as a justice officer and shall determine whether the applicant is of good moral character. This examination includes completion of the Commission's Personal History Statement Form (F-3) and Mandated Background Investigation Form (F-8), ensuring the proper certification and criminal history record check required by each. The Personal History Statement (F-3) and the Mandated Background Investigation (F-8) forms are available on the Commission's website at https://ncdoj.gov/law-enforcement-training/sheriffs/all-commission-forms-publications/.

(b) If the Personal History Statement (F-3) was completed more than 120 days prior to the applicant's date of appointment, the Personal History Statement (F-3) shall be updated by the applicant who shall initial and date all changes or a new Personal History Statement (F-3) must be completed.

(b) Prior to the investigation, the applicant shall complete the Commission's Personal History Statement Form (F-3) to provide a basis for the investigation. The agency shall certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement Form (F-3) and give the applicant the opportunity to update the Personal History Statement Form (F-3) prior to submission to the Division.

(c) The employing agency shall ensure the properly notarized and dated signatures are affixed to the Personal History Statement (F-3). It shall also certify that the results of the background investigation are consistent with the information provided by the applicant on the Personal History Statement (F-3); if not, the employing agency shall provide the applicant the opportunity to update the F-3 prior to submission to the Division. The agency shall utilize an investigator with prior experience or training in conducting background investigations. The investigator shall document the results of the investigation on the Mandated Background Investigation Form (F-8) and shall include in the report of investigation:

(1) biographical data;
(2) family data;
(3) scholastic data;
(4) employment data;
(5) criminal history data;
(6) interviews with the applicant's references; and
a summary of the investigator's findings and conclusions regarding the applicant's moral character known to the agency or listed on the applicant's Personal History Statement (F-3). This documentation shall be included with all other documentation required in 12 NCAC 10B .0408.

(d) The employing agency, prior to employment, shall examine the applicant's character traits and habits displayed in his or her performance as a justice officer and shall determine whether the applicant is of good moral character as defined in Rule .0301(a)(8). The investigator shall summarize the results of the investigation on the Commission-mandated Background Investigation Form (F-8) which shall be signed and dated by the investigator. The Background Investigation Form (F-8) is available on the Commission's website. The employing agency shall include a signed and notarized Release Authorization Form that authorizes the Division staff to obtain documents and records pertaining to the applicant for certification that may be required in order to determine whether certification may be granted.

e) The Background Investigation Form (F-8) shall include records checks from:

1. a Statewide search of the Administrative Office of the Courts (AOC) computerized system;
2. the national criminal record database accessible through the Division of Criminal Information (DCI) network;
3. the North Carolina Division of Motor Vehicles, if the applicant has ever possessed a driver's license issued in North Carolina; and
4. out-of-state motor vehicles check obtained through the Division of Criminal Information or obtained through the any other state's Division of Motor Vehicles if the applicant held a license in that state(s) within the 10 year period prior to the date of appointment.

(f) The background investigation must also include records checks from jurisdictions where the applicant resided within the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:

1. Where the applicant resided in jurisdictions in North Carolina, Clerk of Court records checks shall be acceptable;
2. Where the applicant resided in another country, an Interpol records check shall be acceptable provided the country is a member of Interpol; or if the applicant was in the United States military, a military records check shall be acceptable; or if neither, efforts shall be made and documented to attempt to obtain a records check from the country and submitted if available; and
3. Where the applicant resided in a state other than North Carolina, a records check through the Division of Criminal Information using the Out of State Computer Name Query (IQ) shall be acceptable provided the state will respond to that type of inquiry. If not, then either a records check response from both the municipality, city, or town where the applicant resided and the county-wide Sheriff's Office or Police Department obtained through traditional correspondence, or a records check from the appropriate county-wide or state-wide record holding agency shall be acceptable.

(g) If the applicant had prior military service, the Background Investigation must also include a copy of the applicant's DD214 that shows the characterization of discharge for each discharge that occurred and military discipline received, if any. If the DD214 indicates a discharge characterization of any type other than Honorable, then a military records check shall also be required.
(h) All records checks shall be performed on each name by which the applicant for certification has ever been known since the age of 12. If the applicant has had an official name change that occurred after the applicant had reached the age of 12 years of age, then the name change shall be documented.

(i) The employing agency shall forward to the Division certified copies of any criminal charge(s) and disposition(s) known to the agency or listed on the applicant's Personal History Statement (F-3). The employing agency shall explain any charges or other violations that may result from the records checks required in Paragraph (e) of this Section that do not pertain to the applicant for certification. This documentation shall be included with all other documentation required in 12 NCAC 10B.0408.

(j) The employing agency shall include a signed and notarized Release Authorization Form that authorizes the Division staff to obtain documents and records pertaining to the applicant for certification that may be required in order to determine whether certification may be granted.

(k) The employing agency shall provide the results of a completed and processed form AOC-CR-280, Law Enforcement Application for Verification of Expunction under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-145.8A or 15A-146, for each applicant presented for certification. The AOC-CR-280 form is available on the Commission's website.

History Note: Authority G.S. 17E-7;
Eff. January 1, 1989;
Amended Eff. January 1, 2010; January 1, 2009; January 1, 2007; August 1, 2002; January 1, 1994;
January 1, 1993; January 1, 1992; January 1, 1990;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;
Amended Eff. January 1, 2023;