12NCAC 10B .0408 Verification of Records to Division

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.0408 is proposed to be amended as follows:

12 NCAC 10B.0408 VERIFICATION OF RECORDS TO DIVISION

(a) Prior to issuing certification of each justice officer, for the purpose of verifying compliance with these Rules, the employing agency shall submit to the Division, along with the Report of Appointment (F-4), the following documents:

1. verification of the applicant's compliance with the educational requirement pursuant to 12 NCAC 10B.0302(a);
2. certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
3. the applicant's Medical History Statement (F-1);
4. the applicant's Medical Examination Report (F-2 and F-2A);
5. the applicant's notarized Personal History Statement (F-3);
6. the Commission-mandated Background Investigation Form (F-8) with all accompanying documentation set out in 12 NCAC 10B.0305;
7. documentation of negative results on a drug screen pursuant to 12 NCAC 10B.0301(6); and
8. verification of the applicant's compliance with the probationary certification requirements pursuant to 12 NCAC 10B.0403(b), if the applicant is a deputy sheriff or a detention officer.

(b) Compliance with this Rule is waived, with the exception of the requirements of 12 NCAC 10B.0408(a)(8), for officers applying for dual certification as defined in 12 NCAC 10B.0103(12) provided that:

1. the officer holds a valid certification as either a deputy sheriff, detention officer, or telecommunicator with the employing agency requesting dual certification; and
2. the officer has not had a break in service since initial certification with the employing agency requesting dual certification.

(c) Where the Division has previously received a complete Background Investigation Form (F-8) with all accompanying documentation set out in 12 NCAC 10B.0305 in connection with another application for certification to this Commission, the Background Investigation need only be updated from the date of the last background investigation on file in the Division with documentation of compliance with 12 NCAC 10B.0305(e)(1), (2), (3), and a county-wide and certified records check for each name used by the applicant for each jurisdiction where the applicant has resided in North Carolina since the initial Background Investigation (Form F-8) was completed. In addition:

1. If the applicant has been issued an out-of-state driver's license by a state other than North Carolina since obtaining certification, then compliance with 12 NCAC 10B.0408(f)(4), is required; and
2. If the applicant has resided in a state other than North Carolina since obtaining certification, a certified and county-wide record check from each jurisdiction (if available) shall be provided.

(d) If the Personal History Statement (F-3) required in Subparagraph (a)(5) of this Rule 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) shall be completed.

(e) If the Mandated Background Investigation Form (F-8) required in Subparagraph (a)(6) of this Rule was completed more than 120 days prior to the applicant's date of appointment, the Mandated Background Investigation Form (F-8).
shall be updated by the background investigator who shall initial and date all changes or a new Mandated Background
Investigation Form (F-8), must be completed.

(f) 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 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.

(g) The Background Investigation shall 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.

(h) If the applicant had prior military service, the Background Investigation shall 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.

(i) 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.

(j) 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 (f) of this Rule that do not pertain to the applicant for certification.
(k) All information maintained pursuant to the requirements of this Rule shall be subject to all state and federal laws governing confidentiality.

History Note: Authority G.S. 17E-4; 17E-7;

Eff. January 1, 1989;
Recodified from 12 NCAC 10B .0407 Eff. January 1, 1991;
Temporary Amendment Eff. March 1, 1998;
Amended Eff. August 1, 2002; August 1, 1998;
Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6, 2018;