

NORTH CAROLINA SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION



12 NCAC 10B .0408 VERIFICATION OF RECORDS TO DIVISION

Public Hearing

August 22, 2023 @ 9:00am
1700 Tryon Park Drive
Raleigh, NC 27610

Instructions for Oral and Written Comments

The public comment period begins on August 1, 2023 and ends at 5:00 p.m. on September 15, 2023. Public comments shall be in writing and shall be directed to:

Melissa Bowman
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 November 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 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) documentation consisting of diplomas, school transcripts, or certificates from the educational institution attended by the applicant confirming 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 unredacted Psychological Screening Examination as required by G.S. 17E-7;
- ~~(5)~~(6) the applicant's notarized Personal History Statement (F-3);
- ~~(6)~~(7) the Commission-mandated Background Investigation Form (F-8) with all accompanying documentation set out in 12 NCAC 10B .0305;
- ~~(7)~~(8) documentation of negative results on a drug screen pursuant to 12 NCAC 10B .0301(6); and
- ~~(8)~~(9) documentation 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 and is authorized by the agency to carry a firearm.

(b) Compliance with this Rule is waived, with the exception of the requirements of ~~12 NCAC 10B .0408(a)(8),~~ Subparagraph (a)(9) of this Rule for officers applying for dual certification as defined in 12 NCAC 10B .0103(12) provided that:

- (1) the officer holds a valid certification issued by this Commission, as either a deputy sheriff, detention officer, or telecommunicator with the employing agency requesting dual certification; and
- (2) the officer has continuously been employed as a justice officer with the agency.

(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 Subparagraphs (f)(1), (2), and (3) of this Rule, and a certified criminal record check from each jurisdiction in which the person has resided in and for each name the applicant has used since the initial Background Investigation (Form F-8) was completed. The criminal record check shall be from the Clerk of Court, a law enforcement agency within the jurisdiction, or other governmental entity that maintains or has access to criminal records for the jurisdiction. The criminal record check shall be certified by the entity providing the record with either a raised seal or other visible verification that the document is an authentic copy.

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 criminal record check from each jurisdiction shall be provided, if available. The criminal

record check shall be from the Clerk of Court, a law enforcement agency within the jurisdiction, or other governmental entity that maintains or has access to criminal records for the jurisdiction. The criminal record check shall be certified by the entity providing the record with either a raised seal or other visible verification that the document is an authentic copy.

(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 have the following records checks attached to it when submitted:

- (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) an out-of-state motor vehicles check obtained through the Division of Criminal Information or obtained through another state's division of motor vehicles agency for any state in which the applicant held a license within the 10 year period prior to the date of ~~appointment~~ appointment; ~~and~~
- (5) the applicant's Administrative Office of the Courts' AOC-CR-280 form as set forth in Rule .0305 of this Subchapter.

(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:
 - (A) an Interpol records check shall be acceptable provided the country is a member of Interpol;
 - (B) if the applicant was in the United States military, a military records check shall be acceptable; or
 - (C) if neither an Interpol or United States military record check are available, subject to the limits of United States and North Carolina law, the employing agency shall make a good faith effort to obtain a records check from the national law enforcement authority, judicial authority, or other governmental entity charged with maintaining criminal records for the country where the applicant resided and submit the record check if available. If the employing agency cannot obtain the records check it must submit documentation consisting of the correspondence with the foreign governmental entity and a written report

from the assigned background investigator explaining the employing agency's efforts to obtain the record and why the record could not be obtained. The following steps are required to show a good faith effort to obtain the record check:

- (i) contacting and requesting the record from the foreign governmental entity or entities the employing agency believes are likely to possess the records by mail, telegram, telephone, facsimile or electronic mail;
 - (ii) if referred to another foreign governmental entity, contacting and requesting the record from that foreign governmental entity; and
 - (iii) if requested, providing and submitting any formal requests, forms, or documentation required by the foreign governmental entity before it will provide the record check;
- (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 an Out-of-State Computer Name Query. 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 by mail, telegram, facsimile, or electronic mail, or a records check from the 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, Certificate of Release from Active Duty, 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 a copy of the legal document effecting the name change with either a raised seal or other visible verification that the document is an authentic copy from the governmental entity that issued the document or is charged with maintaining the record of the document shall be submitted by the employing agency.

(j) The employing agency shall forward to the Division certified copies of any criminal charges and dispositions known to the agency or listed on the applicant's Personal History Statement (F-3). The employing agency shall identify any charges or other violations on the records checks required in Paragraph (f) of this Rule that are for individuals other than the applicant for certification and explain why the employing agency believes another individual is responsible for the charge or violation.

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

Eff. January 1, 1989;

Recodified from 12 NCAC 10B .0407 Eff. January 1, 1991;

Amended Eff. January 1, 1996; January 1, 1994; January 1, 1993; January 1, 1992;

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;

Amended Eff. November 1, 2023; April 1, 2023; February 1, 2023; January 1, 2023.