

REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0303

**DEADLINE FOR RECEIPT: January 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Line 4: Certification as what? As a justice officer? Certification and applicant are undefined terms, so the agency needs to specify clearly who it is requiring to act. This could be accomplished by referencing the rule which addresses certification.*

*Line 14: The time frame within which the electronic fingerprints must be submitted is unclear. Presumably applicants must submit them prior to certification, but when do certified justice officers have to submit them?*

*Line 20: Change "may" to "shall."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 29, 2023

1 12 NCAC 10B .0303 is amended with changes as published in 38:02 NCR 85 as follows:

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3 **12 NCAC 10B .0303 FINGERPRINT CRIMINAL HISTORY RECORDS CHECK**

4 (a) Each applicant for certification shall submit electronic fingerprints in the Statewide Automated Fingerprint  
5 Identification System (SAFIS).

6 (b) The employing agency shall forward the applicant's fingerprint record to the North Carolina State Bureau of  
7 Investigation for a criminal history record check utilizing fingerprints against state and federal files.

8 (c) The employing agency will receive a report of the results of the criminal history record check utilizing fingerprints  
9 against state and federal files from the North Carolina State Bureau of Investigation. The employing agency shall  
10 retain the results of the criminal history records check utilizing fingerprints in compliance with the North Carolina  
11 Department of Natural and Cultural Resources Retention Schedule established pursuant to G.S. 121-4 and G.S. 132-  
12 8.1. The employing agency shall include the results of the fingerprint criminal history record check with the  
13 applications submitted to the Commission.

14 (d) Each applicant for certification and certified justice officers shall also submit electronic fingerprints, other  
15 identifying information required by the State and National Repositories of Criminal Histories, and any other  
16 information required by the State Bureau of Investigation for their enrollment in the Federal Bureau of Investigation's  
17 Next Generation Identification (NGI) System and Criminal Justice Record of Arrest and Prosecution Background  
18 (Rap Back) Service.

19 ~~(d)~~(e) Pursuant to 12 NCAC 10B .0301(a)(4) Rule .0301(4) of this Section an applicant for certification as a justice  
20 officer may not perform any action requiring certification by the Commission prior to the date on which the employing  
21 agency receives the report of the result of the criminal history record check unitizing utilizing fingerprints.

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23 *History Note: Authority G.S. 17E-7; 143B-972.1;*  
24 *Eff. January 1, 1989;*  
25 *Amended Eff. August 1, 2000; January 1, 1993; January 1, 1992;*  
26 *Pursuant to G.S. 150B-21.3A, rule is necessary without substantive public interest Eff. March 6,*  
27 *2018;*  
28 *Amended Eff. November 1, 2023; February 1, 2024; January 1, 2023.*  
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REQUEST FOR CHANGES PURSUANT TO G.S. 150B-21.10

AGENCY: N.C. Sheriffs' Education and Training Standards Commission

RULE CITATION: 12 NCAC 10B .0408

**DEADLINE FOR RECEIPT: January 16, 2024**

***PLEASE NOTE: This request may extend to several pages. Please be sure you have reached the end of the document.***

The Rules Review Commission staff has completed its review of this Rule prior to the Commission's next meeting. The Commission has not yet reviewed this Rule and therefore there has not been a determination as to whether the Rule will be approved. You may email the reviewing attorney to inquire concerning the staff recommendation.

In reviewing this Rule, the staff recommends the following changes be made:

*Page 1, Line 24: Remove the comma after "Commission".*

*Page 1, Line 25: Add a comma after "telecommunicator" if the Commission wants "with the employing agency requesting dual certification" to modify deputy sheriffs and detention officers.*

*Page 3, Line 4: Change "must" to "shall."*

Please retype the rule accordingly and resubmit it to our office at 1711 New Hope Church Road, Raleigh, North Carolina 27609.

William W. Peaslee  
Commission Counsel

Date submitted to agency: December 29, 2023

1 12 NCAC 10B .0408 is amended with changes as published in 38:02 NCR 85-87 as follows:

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3 **12 NCAC 10B .0408 VERIFICATION OF RECORDS TO DIVISION**

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

- 6 (1) documentation consisting of diplomas, school transcripts, or certificates from the educational  
7 institution attended by the applicant confirming the applicant's compliance with the educational  
8 requirement pursuant to ~~12 NCAC 10B .0302(a); Rule .0302(a) of this Subchapter;~~
- 9 (2) certified copy of the applicant's Oath of Office, if applying for certification as a deputy sheriff;
- 10 (3) the applicant's Medical History Statement (F-1);
- 11 (4) the applicant's Medical Examination Report (F-2 and F-2A);
- 12 ~~(5) the applicant's unredacted Psychological Screening Examination as required by G.S. 17E-7;~~
- 13 ~~(5)(6) the applicant's notarized Personal History Statement (F-3);~~
- 14 ~~(6)(7) the Commission-mandated Background Investigation Form (F-8) with all accompanying~~  
15 ~~documentation set out in ~~12 NCAC 10B .0305; Rule .0305 of this Subchapter;~~~~
- 16 ~~(7)(8) documentation of negative results on a drug screen pursuant to ~~12 NCAC 10B .0301(6); Rule~~~~  
17 ~~~~.0301(6) of this Subchapter;~~ and~~
- 18 ~~(8)(9) documentation of the applicant's compliance with the probationary certification requirements~~  
19 ~~pursuant to ~~12 NCAC 10B .0403(b); Rule .0403(b) of this Subchapter;~~ if the applicant is a deputy~~  
20 ~~sheriff or a detention officer and is authorized by the agency to carry a firearm.~~

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

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

27 (c) Where the Division has previously received a complete Background Investigation Form (F-8) with all  
28 accompanying documentation set out in ~~12 NCAC 10B .0305; Rule .0305 of this Subchapter~~ in connection with another  
29 application for certification to this Commission, the Background Investigation need only be updated from the date of  
30 the last background investigation on file in the Division with documentation of compliance with Subparagraphs (f)(1),  
31 (2), and (3) of this Rule, and a certified criminal record check from each jurisdiction in which the person has resided  
32 in and for each name the applicant has used since the initial Background Investigation (Form F-8) was completed. The  
33 criminal record check shall be from the Clerk of Court, a law enforcement agency within the jurisdiction, or other  
34 governmental entity that maintains or has access to criminal records for the jurisdiction. The criminal record check  
35 shall be certified by the entity providing the record with either a raised seal or other visible verification that the  
36 document is an authentic copy. In addition:

1 (1) if the applicant has been issued an out-of-state driver's license by a state other than North Carolina  
2 since obtaining certification, then compliance with ~~12 NCAC 10B .0408(f)(4)~~, Subparagraph (f)(4)  
3 of this Rule, is required; and

4 (2) if the applicant has resided in a state other than North Carolina since obtaining certification, a  
5 certified criminal record check from each jurisdiction shall be provided, if available. The criminal  
6 record check shall be from the Clerk of Court, a law enforcement agency within the jurisdiction, or  
7 other governmental entity that maintains or has access to criminal records for the jurisdiction. The  
8 criminal record check shall be certified by the entity providing the record with either a raised seal  
9 or other visible verification that the document is an authentic copy.

10 (d) If the Personal History Statement (F-3) required in Subparagraph ~~(a)(5)-(a)(6)~~ of this Rule was completed more  
11 than 120 days prior to the applicant's date of appointment, the Personal History Statement (F-3) shall be updated by  
12 the applicant, who shall initial and date all changes, or a new Personal History Statement (F-3) shall be completed.

13 (e) If the Mandated Background Investigation Form (F-8) required in Subparagraph ~~(a)(6)~~ (a)(7) of this Rule was  
14 completed more than 120 days prior to the applicant's date of appointment, the Mandated Background Investigation  
15 Form (F-8) shall be updated by the background investigator who shall initial and date all changes or a new Mandated  
16 Background Investigation Form (F-8), must be completed.

17 (f) The Background Investigation Form (F-8) shall have the following records checks attached to it when submitted:

18 (1) a Statewide search of the Administrative Office of the Courts (AOC) computerized system;

19 (2) the national criminal record database accessible through the Division of Criminal Information (DCI)  
20 network;

21 (3) the North Carolina Division of Motor Vehicles, if the applicant has ever possessed a driver's license  
22 issued in North Carolina; ~~and~~

23 (4) an out-of-state motor vehicles check obtained through the Division of Criminal Information or  
24 obtained through another state's division of motor vehicles agency for any state in which the  
25 applicant held a license within the 10 year period prior to the date of ~~appointment~~-appointment; ~~and~~

26 (5) the applicant's Administrative Office of the Courts' AOC-CR-280 form as set forth in Rule .0305  
27 of this Subchapter.

28 (g) The Background Investigation shall include records checks from jurisdictions where the applicant resided within  
29 the 10 year period prior to the date of appointment and where the applicant attended high school, as follows:

30 (1) where the applicant resided in jurisdictions in North Carolina, Clerk of Court records checks shall  
31 be acceptable;

32 (2) where the applicant resided in another country:

33 (A) an Interpol records check shall be acceptable provided the country is a member of Interpol;

34 (B) if the applicant was in the United States military, a military records check shall be  
35 acceptable; or

36 (C) if neither an Interpol or United States military record check are available, subject to the  
37 limits of United States and North Carolina law, the employing agency shall make a good

1 faith effort to obtain a records check from the national law enforcement authority, judicial  
2 authority, or other governmental entity charged with maintaining criminal records for the  
3 country where the applicant resided and submit the record check if available. If the  
4 employing agency cannot obtain the records check it must submit documentation  
5 consisting of the correspondence with the foreign governmental entity and a written report  
6 from the assigned background investigator explaining the employing agency's efforts to  
7 obtain the record and why the record could not be obtained. The following steps are  
8 required to show a good faith effort to obtain the record check:

- 9 (i) contacting and requesting the record from the foreign governmental entity or  
10 entities the employing agency believes are likely to possess the records by mail,  
11 telegram, telephone, facsimile or electronic mail;
- 12 (ii) if referred to another foreign governmental entity, contacting and requesting the  
13 record from that foreign governmental entity; and
- 14 (iii) if requested, providing and submitting any formal requests, forms, or  
15 documentation required by the foreign governmental entity before it will provide  
16 the record check;

17 (3) where the applicant resided in a state other than North Carolina, a records check through the Division  
18 of Criminal Information using the Out-of-State Computer Name Query (IQ) shall be acceptable  
19 provided the state will respond to an Out-of-State Computer Name Query. If not, then either a  
20 records check response from both the municipality, city, or town where the applicant resided and  
21 the county-wide Sheriff's Office or Police Department obtained by mail, telegram, facsimile, or  
22 electronic mail, or a records check from the county-wide or state-wide record holding agency shall  
23 be acceptable.

24 (h) If the applicant had prior military service, the Background Investigation shall also include a copy of the applicant's  
25 DD214, Certificate of Release from Active Duty, that shows the characterization of discharge for each discharge that  
26 occurred and military discipline received, if any. If the DD214 indicates a discharge characterization of any type other  
27 than Honorable, then a military records check shall also be required.

28 (i) All records checks shall be performed on each name by which the applicant for certification has ever been known  
29 since the age of 12. If the applicant has had an official name change that occurred after the applicant had reached the  
30 age of 12 years of age, then a copy of the legal document effecting the name change with either a raised seal or other  
31 visible verification that the document is an authentic copy from the governmental entity that issued the document or  
32 is charged with maintaining the record of the document shall be submitted by the employing agency.

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

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*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~~; ~~February 1, 2024~~; April 1, 2023; February 1, 2023; January 1,  
2023.*