


CCFCA 2023-002	Standard Operating Guideline	Page 1 of 3
	<p style="text-align: center;">Cumberland County Fire Chief's Association</p>	<p><u>REFERENCES:</u> <i>N.C. Gen. Statute § 143B-943, Section 3 of Session Law 2022-8</i> <i>N.C. Gen. Statute § 153A-234 (County)</i> <i>N.C. Gen. Statute § 160A-292 (City)</i> <i>N.C. Gen. Statute § 153A-233</i></p>
Fire Department Applicant - Criminal History Record Checks		
<i>READINGS: – <u>Administrative SOG</u> 1ST Reading February 27, 2023, 2nd Reading March 27, 20023, Final Approval April 24, 2023.</i>		<i>EFFECTIVE: Retroactive - June 14, 2022</i>
APPROVED BY; CCFCA Board of Directors - <i>Freddy L. Johnson Sr.</i> President		

1.0 SCOPE

This guideline shall apply to all primary fire, rescue, and EMS partner agencies of the Cumberland County Fire Chiefs' Association (CCFCA) and shall be adhered to by all agencies.

2.0 PURPOSE

The purpose of this guideline is to provide a systematic procedure for career and volunteer Fire Departments and Emergency Medical Services to obtain Criminal History Records Checks, and obtaining the applicant(s) fingerprints in Cumberland County.

3.0 DEFINITIONS

Criminal History Check – As used in the statute is a search by the SBI of the State criminal history record file and a national criminal history record check by the FBI. This is a more comprehensive search requiring fingerprints and is not the same thing as when an individual goes to a local clerk of court and asks for a copy of their criminal history, which would be information that is publicly available.

Criminal History Record Information (CHRI) - The SBI is North Carolina's central repository for Criminal History Record Information (CHRI) based on fingerprint identification. The SBI receives, processes and stores information based on fingerprint cards received from law enforcement agencies and prison systems.

Cumberland County Sheriff's Office (CCSO) – The Office of Sheriff is an office provided for by the North Carolina Constitution.

State Bureau of Investigation (SBI) – The North Carolina State Bureau of Investigation is the central repository for criminal information for the state of North Carolina. The SBI offers the public and authorized agencies (qualified organizations) criminal background checks.

Emergency Services Director (ESD) - Authority charged to oversee and supervise the administration and enforcement of applicable state and local laws (Ordinances) governing fire prevention services and the North Carolina state fire prevention code.

Fire Chief – The Chief Officer of the Fire Department serving the jurisdiction responsible for providing firefighting, rescue, and related services.

Shall – Mandatory

4.0 POLICY APPLICABILITY:

This applies to all local government or incorporated fire departments with which the county or municipality's contracts for fire suppression, prevention, and related rescue services both paid and volunteer.

4.0.1 POLICY STATEMENT:

G.S. 153A-234 (County) and G.S. 160A-292 (City) were amended to require fire marshals and fire chiefs to obtain a criminal history record check for any person who applies for a position with the fire department. Also amended G.S. 153A-233 requiring counties to ensure that any county, city or other unit of local government or **incorporated volunteer fire department** with whom the county contracts for firefighting or prevention services ***shall*** obtain a criminal history record check of any person who applies for a paid or volunteer position providing firefighting or prevention services. This is also a new 9S requirement for each department.

5.0 PROCEDURES:

The Fire Chief shall ensure that all members as of June 14, 2022, have a criminal history check completed. The Fire Chief shall ensure that he or she goes to the SBI Website [Employers/Licensing Entities at https://www.ncsbi.gov/Services/Background-Checks/Employers-Licensing-Entities](https://www.ncsbi.gov/Services/Background-Checks/Employers-Licensing-Entities) to complete the required access agreement. The Fire Chief will also ensure that new applicants are sent to the Cumberland County Sheriff's Office Special Services Office located at 131 Dick Street, Fayetteville, North Carolina 28301, Monday through Friday (Excluding Holidays) between the hours of 2 PM and 4 PM to obtain the required fingerprints to start the required background check process. These prints will be electronically scanned and printed on two cards and forwarded to the North Carolina State Bureau of Investigation (SBI) for processing before any applicant can be accepted by the Department.

The SBI will (1) forward all completed criminal history checks to the Cumberland County Emergency Services Director. Upon receipt, the Emergency Services Director will review the criminal history.

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checks and notify the Chief of the Department of any findings. The Emergency Services Director shall keep Criminal history checks in a secure file and retains these files meeting the records retention schedule set forth by the North Carolina Secretary of State. Fire Chief at his or her discretion may review the criminal history check, by scheduling a date and time to come to the Emergency Services Director’s Office, located at 500 Executive Place, Fayetteville, North Carolina 28303 to review the file. The criminal history check shall not leave the Emergency Services Office.

The SBI will (2) forward all completed criminal history checks to the incorporated volunteer fire department chief, provided a valid and executed State Bureau of Investigation Access Agreement with the volunteer fire department (Agency) requesting the background check is on file. The Fire Chief of such departments shall keep and maintain the Criminal history checks in a secure file and retains these files meeting the records retention schedule set forth by the North Carolina Secretary of State.

The requesting fire department or agency is responsible for the associated \$38.00 administrative criminal records check fee, which will be billed to the requesting agency for payment. With the payment due date being the following month.

6.0 RESPONSIBLE AUTHORITY:

For Cumberland County Volunteer Fire Departments, the Fire Chief of the individual volunteer Fire Departments and Cumberland County Emergency Services Director (Fire Marshal) are responsible for compliance with the applicable NC General Statute and this policy.

For Cumberland County Municipal Fire Departments, the Fire Chief of the municipal Fire Department and their perspective municipal government unless special provisions are coordinated with the Cumberland County Emergency Services Director are responsible for compliance with the applicable NC General Statute and this policy.

7.0 HISTORY:

Section 3 of Session Law 2022-8 amended several statues to require criminal history record checks of applicants for positions with fire departments and to prohibit an applicant from serving with a fire department if the criminal history record check reveals a conviction for arson or other similar offenses.

3. Enclosure:

1. NC GS §143B-943
2. NCSBI – Non-Criminal Justice Access Agreement
3. NCSBI – Regulations Regarding Receipt of Criminal History Record Information (CHRI)

§ 143B-943. Criminal history record checks of applicants to and current members of fire departments and emergency medical services.

(a) Definitions. - The following definitions apply in this section:

- (1) Applicant. - A person who applies for a paid or volunteer position with a fire department or an emergency medical service.
- (2) Criminal history. - A State or federal history of conviction of a crime, whether a misdemeanor or felony, that bears upon a covered person's fitness for holding a paid or volunteer position with a fire department. The crimes include, but are not limited to, criminal offenses as set forth in any of the following Articles of Chapter 14 of the General Statutes: Article 5, Counterfeiting and Issuing Monetary Substitutes; Article 5A, Endangering Executive, Legislative, and Court Officers; Article 6, Homicide; Article 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 22, Damages and Other Offenses to Land and Fixtures; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. The crimes also include possession or sale of drugs in violation of the North Carolina Controlled Substances Act, Article 5 of Chapter 90 of the General Statutes, and alcohol-related offenses such as sale to underage persons in violation of G.S. 18B-302, or driving while impaired in violation of G.S. 20-138.1 through G.S. 20-138.5.
- (3) Current member. - A person who serves in a paid or volunteer position with a fire department or an emergency medical service.

(b) When requested by a designated local Homeland Security director, a local fire chief of a rated fire department, a county fire marshal, an emergency services director, or if there is no designated local Homeland Security director, local fire chief of a rated fire department, county fire marshal, or emergency services director, when requested by a local law enforcement agency, the North Carolina Department of Public Safety may provide to the requesting director, chief, marshal, or agency an applicant's or current member's criminal history from the State and National Repositories of Criminal Histories. The local Homeland Security director, local fire chief, marshal, director, or local law enforcement agency shall provide to the North Carolina Department of Public Safety the fingerprints of the applicant to be checked, any additional information required by the Department of Public Safety, and a form signed by the applicant to be checked consenting to the (i) check of the criminal record and (ii) use of fingerprints and other identifying information required by the State or National Repositories. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation for a search of the State criminal history record file, and the State Bureau of Investigation shall forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history record check. The local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall keep all information pursuant to this section confidential. The

Department of Public Safety shall charge a reasonable fee for conducting the checks of the criminal history records authorized by this section. The requesting local Homeland Security director, local fire chief, county fire marshal, or local law enforcement agency may charge an applicant or current member the fee amount charged by the Department of Public Safety for the criminal history record check of the applicant or current member.

(c) All releases of criminal history information to the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency shall be subject to, and in compliance with, rules governing the dissemination of criminal history record checks as adopted by the North Carolina Department of Public Safety. All of the information the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency receives through the checking of the criminal history is privileged information and for the exclusive use of that director, chief, marshal, or agency.

(d) If the applicant's or current member's verified criminal history record check reveals one or more convictions of a crime listed in subsection (a) of this section, then the conviction constitutes just cause for not selecting the applicant for the position or for dismissing the current member from a current position with the local fire department or emergency medical services. Except as provided in subsection (d1) of this section, the conviction does not automatically prohibit volunteering or employment; however, the following factors shall be considered by the local Homeland Security director, local fire chief, county fire marshal, emergency services director, or local law enforcement agency in determining whether the applicant shall be denied or the current member dismissed from a current position:

- (1) The level and seriousness of the crime.
- (2) The date of the crime.
- (3) The age of the person at the time of the conviction.
- (4) The circumstances surrounding the commission of the crime, if known.
- (5) The nexus between the criminal conduct of the person and the duties of the person.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the person since the date the crime was committed.
- (7) The subsequent commission by the person of a crime listed in subsection (a) of this section.

(d1) An applicant is prohibited from serving in a paid or volunteer position with a fire department if the applicant's verified criminal history record check reveals a conviction of arson or another felony conviction involving burning or setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes. A local Homeland Security director, local fire chief, county fire marshal, or local law enforcement agency, as applicable, shall request, and an applicant shall disclose, any pending felony charges involving burning or setting fire under Article 15, Article 22, or any other Article of Chapter 14 of the General Statutes. Upon becoming aware of pending felony charges, through the required disclosure or by other means, a local Homeland Security director, local fire chief, county fire marshal, or local law enforcement agency shall not offer the applicant a paid or volunteer position, except as provided in subsection (f) of this section. This subsection does not apply to an applicant for a paid or volunteer position with an emergency medical service.

(e) The emergency medical services may deny an applicant the position or dismiss a current member who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from a current position. The emergency medical services may extend a conditional offer of the position pending the results of a criminal history record check required by this section.

(f) The local fire department shall deny an applicant the position and may dismiss a current member who refuses to consent to a criminal history record check or use of fingerprints or other identifying information required by the State or National Repositories of Criminal Histories. This refusal constitutes just cause for the denial of the position or the dismissal from a current position. The local fire department may extend a conditional offer of the position pending the (i) results of a criminal history record check required by this section or (ii) final disposition of felony charges disclosed as required by this section or otherwise discovered.

(g) For purposes of this section, "local fire chief" shall include the fire chief of any bona fide fire department certified to the Commissioner of Insurance with at least a Class 9S rating for insurance grading purposes; "county fire marshal" shall include only fire marshals who are paid employees of a county; and "emergency services director" shall include only emergency services directors who are paid employees of a city or county. (2003-182, s. 1; 2007-479, s. 1; 2012-12, s. 2(oo); 2014-27, s. 1; 2014-100, s. 17.1(m), (o), (q); 2015-181, s. 47; 2022-8, s. 3(a).)



ROY COOPER
GOVERNOR

NORTH CAROLINA STATE BUREAU OF INVESTIGATION

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ROBERT SCHURMEIER
DIRECTOR

STATE BUREAU OF INVESTIGATION NON-CRIMINAL JUSTICE ACCESS AGREEMENT

North Carolina General Statute (NCGS): _____

This Agreement made and entered into by and between the North Carolina State Bureau of Investigation (hereafter referred to as "NCSBI") and the Agency named below

_____ (hereafter referred to as "AGENCY") for the purpose and consideration hereafter set out:

I. Purpose:

The purpose of this Agreement is to outline the responsibilities of the NCSBI and the AGENCY regarding the proper care, custody, and control of all criminal history record information (CHRI) received by the Agency from the NCSBI as authorized by the North Carolina statute listed above.

II. Responsibilities of NCSBI:

- A. NCSBI agrees to provide the appropriate training to the AGENCY Administrator, or designee, as requested or needed for the above mentioned NCSBI system access.
- B. NCSBI agrees to notify the AGENCY Administrator of any changes in the record disseminated to the AGENCY Administrator, due to a court ordered expungement, which are discovered by NCSBI within ninety (90) days of dissemination of such record to the AGENCY Administrator.
- C. NCSBI will conduct a compliance audit of AGENCY regarding the handling and dissemination of CHRI. The audits are conducted on a three (3) year cycle.

III. Responsibilities of the AGENCY:

The AGENCY agrees to comply with the following policies and procedures:

- A. The AGENCY recognizes that the purpose for which it is authorized to receive CHRI is to assist in determining whether current employees or individuals applying for employment have any disqualifying information appearing on their criminal record.

- B. The AGENCY agrees that its use of CHRI is for this purpose alone and for no other, and that neither it, nor any of its employees, shall make any other or further use of such information, including confirming the existence or non- existence of a criminal record.
- C. The AGENCY understands that in order to obtain a state and national criminal history record check, only one (1) applicant fingerprint card shall be submitted to NCSBI for processing.
- D. The AGENCY must make requests in writing through the Authorized Official to the NCSBI. Requests from other AGENCY officials will not be honored. The applicant's/employee's complete name, sex, race, date of birth, social security number (optional) and any other descriptive data as shall be appropriate to identify the individual, shall be submitted on the fingerprint card provided by the NCSBI.
- E. The AGENCY understands the Authority for Release of Information form is not to be submitted to the NCSBI but shall be retained by the AGENCY for a period of one (1) year from the date the fingerprints are submitted to the NCSBI.
- F. The AGENCY understands that if the information contained in the CHRI is used to disqualify an individual, the CHRI shall be provided to the subject of the record and afforded an opportunity to provide additional information or challenge the accuracy of the information. Any individual wishing to correct, complete or otherwise challenge a CHRI record must avail themselves of the procedures set forth in the Division of Criminal Information (DCI) administrative procedures. (14B NCAC 18B .0404).
- G. With the exception of Section III, Paragraph E noted above, the AGENCY understands that under no circumstances shall CHRI obtained from NCSBI and FBI be released to or reviewed by anyone other than the AGENCY.
- H. The AGENCY understands that an individual should not be presumed to be guilty of any charge/arrest for which there is no final disposition reflected in the CHRI.
- I. The AGENCY agrees that the CHRI will not be received or sent by email or fax. The AGENCY agrees to contact the NCSBI for approval before initiating use of an electronic system intended to store any CHRI received by the NCSBI.
- J. The AGENCY agrees to comply with the most recent version of the FBI's *Criminal Justice Information Services (CJIS) Security Policy* and, if applicable, the *Security and Management Control Outsourcing Standard for Non-Channeler*.
- K. The AGENCY agrees to notify the NCSBI in writing prior to entering a contract with a third party for outsourcing services that will require the third party to have access to CHRI supplied by the NCSBI and/or the FBI.
- L. The AGENCY shall be responsible for the security and privacy of the CHRI received by it or received by any private contractor pursuant to a specific agreement with the AGENCY.

- M. The AGENCY understands the CHRI shall be kept under lock and key, separate from the Personnel Files. The CHRI shall only be available to the Authorized Officials as set forth in this access agreement.
- N. The AGENCY shall be responsible for reviewing AGENCY policies and knowing what data can and cannot be used as grounds for denying or terminating employment in accordance with standards in the appropriate enabling legislation referred to above.
- O. The AGENCY understands that NCSBI and the FBI maintains only those criminal records for which an individual is required by law to submit to the fingerprinting process; consequently, there are criminal records maintained by other states or local agencies that are not on file with the NCSBI or the FBI.
- P. **If state and national**, the AGENCY agrees to pay the fee of thirty-eight (\$38.00) dollars for every criminal record check. The AGENCY understands it will be billed at the end of each month for the amount due. The AGENCY will return a copy of the invoice with the AGENCY's check in the amount of the total payment due. The payment is due the following month. The AGENCY's check should be made payable to the North Carolina State Bureau of Investigation and mailed to:

NC State Bureau of Investigation
Attention: Business Office
Post Office Box 29500
Raleigh, North Carolina 27626-0500

- Q. **If state ONLY**, The AGENCY agrees to pay the fee of ten dollars (10.00) for each name check or fourteen dollars (14.00) for every fingerprint card processed by SBI, which reflects the cost of providing the CHRI record. The AGENCY understands it will be billed at the end of each month for the amount due. The AGENCY will return a copy of the invoice with the AGENCY's check in the amount of the total payment due. The payment is due the following month. The AGENCY's check should be made payable to the North Carolina State Bureau of Investigation and submitted.

IV. Penalties/Liability

The NCSBI reserves the right to terminate this Agreement upon determining that the AGENCY has violated any applicable law, rule or regulation or has violated the terms of this Agreement. The Agency agrees to indemnify and to absolve of liability the North Carolina Department of Public Safety, NCSBI, and its officials and employees from and against any and all claims, demands, actions, suits, and proceedings by others, against all liability including but not limited to any liability for damages by reason or arising out of any false arrest or imprisonment, employee action, or any action whatsoever, or against any lost, cost, expense, and damage, resulting therefrom, arising out of this Agreement, or breach of this Agreement, or NCSBI rules and regulations.

Complete required fields below

I certify that I have read and understand the terms of this Agreement with the North Carolina State Bureau of Investigation, Criminal Information and Identification Section, and I will uphold the Agreement.

_____ County, North Carolina

I certify that the following person(s) personally appeared before me this day, each acknowledging to me that he or she signed the foregoing document:

By:

Printed Name of AGENCY Authorized Official

Signature of AGENCY Authorized Official

Date: _____

Official Signature of Notary Public

Notary's Typed or Printed Name

My Commission Expires _____

(Seal)

NCSBI OFFICIAL USE ONLY

This Access Agreement becomes effective on _____
MONTH / DAY / YEAR

Approved by: _____

Denied by: _____

North Carolina State Bureau of Investigation (NCSBI)

Regulations Regarding Receipt of Criminal History Record Information (CHRI)

- Criminal History Record Information (CHRI) received from the NCSBI and the FBI (if applicable) must be kept locked and secured. It must be kept separate from personnel files. CHRI should only be available to the authorized officials listed by the agency.
- CHRI received by the agency should not be given to another agency or the applicant.
- If the applicant should need to challenge the accuracy or completeness of his/her North Carolina state record, he/she should contact the NCSBI, Civilian Services Unit, ciishelp@ncsbi.gov for a Right to Review. If the applicant should need to challenge the accuracy or completeness of any entry on his/her national record he/she should contact the FBI, Criminal Justice Information Services (CJIS) Division, ATTN: SCU, Mod. D-2, 1000 Custer Hollow Road, Clarksburg, WV 26306.
- CHRI should only be used for the original licensing, original hire/not hire decision. CHRI can change or be updated at any time and, therefore, should not be held for any other use.
- The Authority for Release of Information form (AFR) and the Electronic Fingerprint Submission Release of Information form (EFSR) should be maintained on file for one year at the agency.
- To dispose of the CHRI and the fingerprint card, either shred the information or burn it. It is not acceptable to discard CHRI without shredding the information. The agency should not have an outside agency do the shredding. Outsourcing is not recommended, *unless* an authorized official is present for the disposal of the documents.
- The NCSBI recommends that anyone with a felony conviction not have access to CHRI.
- If CHRI is received with an arrest that does not have a final court disposition, the clerk of court in the county the person was arrested in, must be contacted to obtain the disposition *before* denying employment.
- If the agency does not understand the meaning of a charge or a disposition, contact the clerk of court in the arresting county for a clarification.
- The NCSBI recommends doing a background check on all personnel that will be handling CHRI. If the North Carolina General Statute for the agency does not allow a background check, a public record check through the Administrative Office of the Courts can be conducted.
- Do NOT ask a law enforcement agency to conduct name checks for the agency. There must be an approved local ordinance in place for this process.
- Please keep a copy of the Access Agreement (AA) on file for audit purposes. Keep the original of the applicant's AFR and EFSR on file for one year. DO NOT give a copy of the AFR/EFSR form to another agency and do not create your own.
- Invoices will be mailed the first day of each month. For invoice questions and/or payments, please contact mpettengill@ncsbi.gov or 919-582-8552.
- To update authorized officials, please include a letterhead stating which authorized officials will be added and/or removed by contacting AIUhelp@ncsbi.gov. Each authorized official for the agency must sign and complete this form.
- The NCSBI's mailing address is:
 - NCSBI Criminal Information and Identification Section
 - Attn: Civilian Services
 - PO Box 29500 Raleigh, NC 27626
 - Fax number: 919-661-5977

Signature of Official Receiving CHRI _____ Date _____

Printed Name and Title of Official _____

Email _____

Agency Name _____

Address _____

Agency Phone Number _____

Agency's NCSBI's Access Agreement Number/OCA #/ORI # _____