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Overview - NCAROLINA; ART. 3 Revised Statutes Annotated

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privacy and security of criminal justice information.

ART. 3. CRIMINAL STATISTICS

ARTICLE 3.

Division of Criminal Statistics.

§ 114-10. Division of Criminal Statistics.

The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

- (1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.
- (2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.
- (3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.
- (4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.
- (5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

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General Statutes of North Carolina

Division of Criminal Statistics.

§ 114-10. **Division of Criminal Statistics.** — The Attorney General shall set up in the Department of Justice a division to be designated as the Division of Criminal Statistics. There shall be assigned to this Division by the Attorney General duties as follows:

- (1) To collect and correlate information in criminal law administration, including crimes committed, arrests made, dispositions on preliminary hearings, prosecutions, convictions, acquittals, punishment, appeals, together with the age, race, and sex of the offender, and such other information concerning crime and criminals as may appear significant or helpful. To correlate such information with the operations of agencies and institutions charged with the supervision of offenders on probation, in penal and correctional institutions, on parole and pardon, so as to show the volume, variety and tendencies of crime and criminals and the workings of successive links in the machinery set up for the administration of the criminal law in connection with the arrests, trial, punishment, probation, prison parole and pardon of all criminals in North Carolina.
- (2) To collect, correlate, and maintain access to information that will assist in the performance of duties required in the administration of criminal justice throughout the State. This information may include, but is not limited to, motor vehicle registration, drivers' licenses, wanted and missing persons, stolen property, warrants, stolen vehicles, firearms registration, drugs, drug users and parole and probation histories. In performing this function, the Division may arrange to use information available in other agencies and units of State, local and federal government, but shall provide security measures to insure that such information shall be made available only to those whose duties, relating to the administration of justice, require such information.
- (3) To make scientific study, analysis and comparison from the information so collected and correlated with similar information gathered by federal agencies, and to provide the Governor and the General Assembly with the information so collected biennially, or more often if required by the Governor.
- (4) To perform all the duties heretofore imposed by law upon the Attorney General with respect to criminal statistics.
- (5) To perform such other duties as may be from time to time prescribed by the Attorney General. (1939, c. 315, s. 2; 1955, c. 1257, ss. 1, 2; 1969, c. 1267, s. 1.)

§ 114-10.1. **Police Information Network.** — (a) The Division of Criminal Statistics is authorized to establish, devise, maintain and operate, under the control and supervision of the Attorney General, a system for receiving and disseminating to participating agencies information collected, maintained and

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correlated under authority of G.S. 114-10 of this Article. The system shall be known as the Police Information Network.

(b) The Attorney General is authorized to cooperate with the Division of Motor Vehicles, Department of Administration, Department of Correction and other State, local and federal agencies and organizations in carrying out the purpose and intent of this section, and to utilize, in cooperation with other State agencies and to the extent as may be practical, computers and related equipment as may be operated by other State agencies.

"(c) The Attorney General, after consultation with participating agencies, shall adopt rules and regulations governing the organization and administration of the Police Information Network, including rules and regulations governing the types of information relating to the administration of criminal justice to be entered into the system, and who shall have access to such information. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who has entered a criminal proceeding in accordance with G.S. 15A-141 from obtaining information relevant to that criminal proceeding. The rules and regulations governing access to the Police Information Network shall not prohibit an attorney who represents a person in adjudicatory or dispositional proceedings for an infraction from obtaining the person's driving record or criminal history. ~~The Attorney General may call upon the Governor's Committee on Law and Order for advice and such other assistance that the Committee may be authorized to render.~~"

ARTICLE 4.

State Bureau of Investigation.

§ 114-12. Bureau of Investigation created; powers and duties. — In order to secure a more effective administration of the criminal laws of the State, to prevent crime, and to procure the speedy apprehension of criminals, the Attorney General shall set up in the Department of Justice a division to be designated as the State Bureau of Investigation. The Division shall have charge of and administer the agencies and activities herein set up for the identification of criminals, for their apprehension, for the scientific analysis of evidence of crime, and investigation and preparation of evidence to be used in criminal courts; and the said Bureau shall have charge of investigation of criminal matters herein especially mentioned, and of such other crimes and criminal procedure as the Governor may direct. (1937, c. 349, s. 1; 1939, c. 315, s. 6.)

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§ 114-13. Director of the Bureau; personnel. — The Attorney General shall appoint a Director of the Bureau of Investigation, who shall serve at the will of the Attorney General, and whose salary shall be fixed by the Department of Administration under G.S. 143-36 et seq. He may further appoint a sufficient number of assistants and stenographic and clerical help, who shall be competent and qualified to do the work of the Bureau. The salaries of such assistants shall be fixed by the Department of Administration under G.S. 143-36 et seq. The salaries of clerical and stenographic help shall be the same as now provided for similar employees in other State departments and bureaus.

All the benefits, duties, authority and requirements of subsections (b), (c), (d), and (e) of G.S. 20-185 applicable to members and officers of the State Highway Patrol, shall be applicable to officers and special agents of the State Bureau of Investigation whose salaries are fixed as provided by law, and wherever in said subsections any duty, responsibility or authority is vested in the Commanding Officer of the State Highway Patrol or the Commissioner of Motor Vehicles, such duty, responsibility, or authority is hereby vested in the Director of the State Bureau of Investigation. Wherever in said subsection [s] any benefits, duties, authority, or requirements are vested in, placed on, or extended to officers and members of the State Highway Patrol, such benefits, duties, authority and requirements are vested in, placed on, and extended to officers and special agents of the State Bureau of Investigation. (1937, c. 349, s. 4; 1939, c. 315, s. 6; 1955, c. 1185, s. 1; 1957, c. 269, s. 1.)

§ 114-14. General powers and duties of Director and assistants. — The Director of the Bureau and his assistants are given the same power of arrest as is now vested in the sheriffs of the several counties, and their jurisdiction shall be statewide. The Director of the Bureau and his assistants shall, at the request of the Governor, give assistance to sheriffs, police officers, district attorneys, and judges when called upon by them and so directed. They shall also give assistance, when requested, to the office of the Department of Correction in the investigation of cases pending before the parole office and of complaints lodged against parolees, when so directed by the Governor. (1937, c. 349, s. 5; 1973, c. 47, s. 2; c. 1262, s. 10.)

§ 114-15. Investigations of lynchings, election frauds, etc.; services subject to call of Governor; witness fees and mileage for Director and assistants.

The Bureau shall, through its Director and upon request of the Governor, investigate and prepare evidence in the event of any lynching or mob violence in the State; shall investigate all cases arising from frauds in connection with elections when requested to do so by the Board of Elections, and when so directed by the Governor. Such investigation, however, shall in nowise interfere with the power of the Attorney General to make such investigation as he is

authorized to make under the laws of the State. The Bureau is authorized further, at the request of the Governor, to investigate cases of frauds arising under the Social Security Laws of the State, of violations of the gaming laws, and lottery laws, and matters of similar kind when called upon by the Governor so to do. In all such cases it shall be the duty of the Department to keep such records as may be necessary and to prepare evidence in the cases investigated, for the use of enforcement officers and for the trial of causes. The services of the Director of the Bureau, and of his assistants, may be required by the Governor in connection with the investigation of any crime committed anywhere in the State when called upon by the enforcement officers of the State, and when, in the judgment of the Governor, such services may be rendered with advantage to the enforcement of the criminal law. The State Bureau of Investigation is hereby authorized to investigate without request the attempted arson of, or arson of, damage of, theft from, or theft of, or misuse of, any State-owned personal property, buildings, or other real property or any assault upon or threats against any legislative officer named in G.S. 147-2(1), (2), or (3) or any executive officer named in G.S. 147-3(c). The Bureau also is authorized at the request of the Governor to conduct a background investigation on a person that the Governor plans to nominate for a position that must be confirmed by the General Assembly, the Senate, or the House of Representatives. The background investigation of the proposed nominee shall be limited to an investigation of the person's criminal record, educational background, employment record, records concerning the listing and payment of taxes, and credit record, and to a requirement that the person provide the information contained in the statements of economic interest required to be filed by persons subject to Executive Order Number 1, filed on January 31, 1985, as contained on pages 1405 through 1419 of the 1985 Session Laws (First Session, 1985). The Governor must give the person being investigated written notice that he intends to request a background investigation at least 10 days prior to the date that he requests the State Bureau of Investigation to conduct the background investigation. The written notice shall be sent by regular mail, and there is created a rebuttable presumption that the person received the notice if the Governor has a copy of the notice.

The State Bureau of Investigation is further authorized, upon request of the Governor or the Attorney General, to investigate the commission or attempted commission of the crimes defined in the following statutes:

- (1) All sections of Article 4A of Chapter 14 of the General Statutes;
- (2) G.S. 14-277.1;
- (3) G.S. 14-277.2;
- (4) G.S. 14-283;
- (5) G.S. 14-284;
- (6) G.S. 14-284.1;
- (7) G.S. 14-288.2;
- (8) G.S. 14-288.7;
- (9) G.S. 14-288.8; and
- (10) G.S. 14-288.20.

Sec. 2. G.S. 114-15 and reads as rewritten:

~~"All records and evidence collected and compiled by the Director of the Bureau and his assistants shall not be considered public records within the meaning of G.S. 132-1, and following, of the General Statutes of North Carolina and may be made available to the public only upon an order of a court of competent jurisdiction. Provided that, all~~ All records and evidence collected and compiled by the Director of the Bureau and his assistants shall, upon request, be made available to the district attorney of any district if the same concerns persons or investigations in his district.

In all cases where the cost is assessed against the defendant and paid by him, there shall be assessed in the bill of cost, mileage and witness fees to the Director and any of his assistants who are witnesses in cases arising in courts of this State. The fees so assessed, charged and collected shall be forwarded by the clerks of the court to the Treasurer of the State of North Carolina, and there credited to the Bureau of Identification and Investigation Fund."

§ 114-16. Laboratory and clinical facilities; employment of criminologists; services of scientists, etc., employed by State; radio system.

In the said Bureau there shall be provided laboratory facilities for the analysis of evidences of crime, including the determination of presence, quantity and character of poisons, the character of

§ 114-17. Cooperation of local enforcement officers. — All local enforcement officers are hereby required to cooperate with the said Bureau, its officers and agents, as far as may be possible, in aid of such investigations and arrest and apprehension of criminals as the outcome thereof. (1937, c. 349, s.

§ 114-18. Governor authorized to transfer activities of Central Prison Identification Bureau to the new Bureau; photographing and fingerprinting records.

The records and equipment of the Identification Bureau now established at Central Prison shall be made available to the said Bureau of Investigation, and the activities of the Identification Bureau now established at Central Prison may, in the future, if the Governor deem advisable, be carried on by the Bureau hereby established; except that the Bureau established by this Article shall have authority to make rules and regulations whereby the photographing and fingerprinting of persons confined in the Central Prison, or clearing through the Central Prison, or sentenced by any of the courts of this State to service upon the roads, may be taken and filed with the Bureau. (1937, c. 349, s. 2; 1939, c. 315, s. 6.)

§ 114-19. Criminal statistics. — It shall be the duty of the State Bureau of Investigation to receive and collect police information, to assist in locating, identifying, and keeping records of criminals in this State, and from other states, and to compare, classify, compile, publish, make available and disseminate any and all such information to the sheriffs, constables, police authorities, courts or any other officials of the State requiring such criminal identification, crime statistics and other information respecting crimes local and national, and to conduct surveys and studies for the purpose of determining so far as is possible the source of any criminal conspiracy, crime wave, movement or cooperative action on the part of the criminals, reporting such conditions, and to cooperate with all officials in detecting and preventing. (1965, c. 1049, s. 1; 1973, c. 1286, s. 19.)

§ 114-19.1. Fees for performing certain background investigations.

When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this subsection shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

As used in this section, "administration of criminal justice" means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court.

Nothing in this section shall be construed as enlarging any right to receive a record of the State Bureau of Investigation. Such rights are and shall be governed by G.S. 114-15, G.S. 114-19 and other applicable statutes. (1979, c. 1981, c. 832, s. 1.)

"§ 114-19.3. Criminal record checks of providers of treatment for or services to children, the elderly, mental health patients, the sick, and the disabled.

(a) Authority. — The Department of Justice may provide to any of the following entities a criminal record check to the employer of an individual who is employed by or who that entity, has applied for employment with the following: that entity, or has volunteered to provide direct care on behalf of that entity:

- (1) Hospitals licensed under Chapter 131E of the General Statutes; Statutes.
- (2) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes; Statutes.
- (3) ~~Domiciliary care facilities~~ Adult care homes licensed under Chapter ~~131E~~ 131D of the General Statutes; Statutes.
- (4) Home care agencies or hospices licensed under Chapter 131E of the General Statutes; Statutes.
- (5) Child placing agencies licensed under Chapter 131D of the General Statutes; Statutes.
- (6) Residential child care facilities licensed under Chapter 131D of the General Statutes; Statutes.
- (7) Hospitals licensed under Chapter 122C of the General Statutes; Statutes.
- (8) Area mental health, developmental disabilities, and substance abuse authorities licensed under Chapter 122C of the General Statutes, including a contract agency of an area authority that is subject to the provisions of Article 4 of Chapter ~~122C~~ of the General Statutes; that Chapter.

- (9) Licensed child day care facilities and registered and nonregistered child day care homes, homes regulated by the State, and State.
- (10) Any other organization or corporation, whether for profit or nonprofit, that provides direct care or services to children, the sick, the disabled, or the elderly.

~~(b) Procedure. -- A criminal record check may be conducted by using an individual's fingerprint or any information required by the Department of Justice to identify that individual. A criminal record check shall be provided only if the employee or applicant individual whose record is checked consents to the record~~

check. The information shall be kept confidential by the employer entity that receives the information. Upon the disclosure of confidential information under this section by the employer, entity, the Department may refuse to provide further criminal record checks to that employer, entity.

~~(c) The Department of Justice, at the request of an agency, facility, organization, or corporation listed in subsection (a) of this section, may provide a criminal record check of a volunteer who provides direct care on behalf of the organization or corporation if the volunteer consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency, facility, corporation, or organization, the Department may refuse to provide further criminal record checks to that agency, facility, corporation, or organization.~~

(d) Foster or Adoptive Parent. -- The Department of Justice, at the request of a child placing agency licensed under Chapter 131D of the General Statutes or a local department of social services, may provide a criminal record check of a prospective foster care or adoptive parent if the prospective parent consents to the record check. The information shall be kept confidential and upon the disclosure of confidential information under this section by the agency or department, the Department may refuse to provide further criminal record checks to that agency or department.

(e) Fee. -- The Department may charge a fee to offset the cost incurred by it to conduct a criminal record check under this section. The fee may not exceed fourteen dollars (\$14.00)."

Sec. 2. Chapter 131D of the General Statutes is amended by adding a new Article to read:

"ARTICLE 5.

"Miscellaneous Provisions.

"§ 131D-40. Criminal history record checks required for certain applicants for employment.

(a) Requirement. -- An offer of employment by an adult care home licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. An adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. An adult care home shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home is confidential and may not be disclosed.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the administrator of the adult care home or the administrator's designee shall consider all of the following factors in determining whether to hire the applicant:

- (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 job duties of the position to be filled.
- (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 relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

(c) Limited Immunity. -- An adult care home and an officer or employee of an adult care home that, in good faith, complies with this section is not liable for the failure of the home to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, 'relevant offense' means a State crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of aged or disabled persons. These crimes include the criminal offenses 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 and Legislative Officers; Article 6, Homicide; Article 7A, 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 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 and Civil Disorders; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. These 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."

Sec. 3. Chapter 131E of the General Statutes is amended by adding a new Article to read:

"ARTICLE 15.

"Miscellaneous Provisions.

"§ 131E-255. Criminal history record checks required for certain applicants for employment.

(a) Requirement. -- An offer of employment by a nursing home or a home care agency licensed under this Chapter to an applicant to fill a position that does not require the applicant to have an occupational license is conditioned on consent to a criminal history record check of the applicant. A nursing home or a home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. A nursing home or home care agency shall submit a request to the Department of Justice under G.S. 114-19.3 to conduct a criminal history record check within five business days of making the conditional offer of employment. All criminal history information received by the home or agency is confidential and may not be disclosed.

(b) Action. -- If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the administrator of the nursing home or home care agency, or the administrator's designee, shall consider all of the following factors in determining whether to hire the applicant:

- (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 job duties of the position to be filled.
- (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 relevant offense.

The fact of conviction of a relevant offense alone shall not be a bar to employment; however, the listed factors shall be considered by the administrator or the administrator's designee.

(c) Limited Immunity. -- An entity and an officer or employee of an entity that, in good faith, complies with this section is not liable for the failure of the entity to employ an individual on the basis of information provided in the criminal history record check of the individual.

(d) Relevant Offense. -- As used in this section, the term 'relevant offense' has the same meaning as in G.S. 131D-40."

Sec. 4. G.S. 114-19.1 reads as rewritten:

"§ 114-19.1. Fees for performing certain background investigations: Criminal history background investigations: fees.

(a) When the Department of Justice determines that any person is entitled by law to receive information, including criminal records, from the State Bureau of Investigation, for any purpose other than the administration of criminal justice, the State Bureau of Investigation shall charge the recipient of such information a reasonable fee for retrieving such information. The fee authorized by this section shall not exceed the actual cost of locating, editing, researching and retrieving the information, and may be budgeted for the support of the State Bureau of Investigation.

(b) As used in this section, 'administration of criminal justice' means the performance of any of the following activities: the detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, correctional supervision, or rehabilitation of persons suspected of, accused of or convicted of a criminal offense. The term also includes screening for suitability for employment, appointment or retention of a person as a law enforcement or criminal justice officer, or as an officer of the court, or for suitability for appointment of a person who must be appointed or confirmed by the General Assembly, the Senate, or the House of Representatives.

(c) In providing criminal history record checks, the Department of Justice shall process requests in the following priority order:

- (1) Administration of criminal justice record checks,
- (2) Mandatory noncriminal justice criminal history record checks,
- (3) Voluntary noncriminal justice criminal history record checks.

(d) Nothing in this section shall be construed as enlarging any right to receive any record of the State Bureau of Investigation. Such rights are and shall be controlled by G.S. 114-15, G.S. 114-19, G.S. 120-19.4A, and other applicable statutes."

Sec. 5. This act becomes effective January 1, 1997, except that the requirements imposed by Section 3 of this act on home care agencies become effective January 1, 1998. Sections 3 and 4 apply to applicants who apply for employment on or after the appropriate effective date.

GENERAL ASSEMBLY OF NORTH CAROLINA
1995 SESSION
RATIFIED BILL

CHAPTER 398
HOUSE BILL 90

AN ACT TO PROVIDE THAT A PERSON WHO MEETS SPECIFIED STATUTORY CRITERIA MAY CARRY A CONCEALED HANDGUN IF THE PERSON HAS OBTAINED A CONCEALED HANDGUN PERMIT, TO AUTHORIZE SHERIFFS TO ISSUE CONCEALED HANDGUN PERMITS, TO ESTABLISH THE CRITERIA THAT MUST BE SATISFIED TO RECEIVE THE PERMIT, TO ESTABLISH THE PROCEDURE FOR THE ISSUANCE OF A CONCEALED HANDGUN PERMIT, TO INCREASE THE PENALTY FOR CARRYING A CONCEALED HANDGUN WITHOUT A PERMIT, AND TO MAKE CONFORMING STATUTORY CHANGES.

The General Assembly of North Carolina enacts:

Section 1. Chapter 14 of the General Statutes is amended by adding a new Article to read:

"ARTICLE 54B,
"Concealed Handgun Permit.

"§ 14-415.10. Definitions.

The following definitions apply to this Article:

- (1) Carry a concealed handgun. -- The term includes possession of a concealed handgun.
- (2) Handgun. -- A firearm that has a short stock and is designed to be held and fired by the use of a single hand.
- (3) Permit. -- A concealed handgun permit issued in accordance with the provisions of this Article.

"§ 14-415.11. Permit to carry concealed handgun: scope of permit.

(a) Any person who has a concealed handgun permit may carry a concealed handgun unless otherwise specifically prohibited by law. The person shall carry the permit together with valid identification whenever the person is carrying a concealed handgun. shall disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun when approached or addressed by the officer, and shall display both the permit and the proper identification upon the request of a law enforcement officer.

(b) The sheriff shall issue a permit to carry a concealed handgun to a person who qualifies for a permit under G.S. 14-415.12. The permit shall be valid throughout the State for a period of three years from the date of issuance.

(c) A permit does not authorize a person to carry a concealed handgun in the areas prohibited by G.S. 14-269.2, 14-269.3, 14-269.4, and 14-277.2, in any area prohibited by 18 U.S.C. § 922 or any other federal law, in a law enforcement or correctional facility, in a building housing only State or federal offices, in an office of the State or federal government that is not located in a building exclusively occupied by the State or federal government, a financial institution, or any other premises

where notice that carrying a concealed handgun is prohibited by the posting of a conspicuous notice or statement by the person in legal possession or control of the premises. It shall be unlawful for a person, with or without a permit, to carry a concealed handgun while consuming alcohol or at any time while the person has remaining in his body any alcohol or in his blood a controlled substance previously consumed, but a person does not violate this condition if a controlled substance in his blood was lawfully obtained and taken in therapeutically appropriate amounts.

(d) A person who is issued a permit shall notify the sheriff who issued the permit of any change in the person's permanent address within 30 days after the change of address. If a permit is lost or destroyed, the person to whom the permit was issued shall notify the sheriff who issued the permit of the loss or destruction of the permit. A person may obtain a duplicate permit by submitting to the sheriff a notarized statement that the permit was lost or destroyed and paying the required duplicate permit fee.

"§ 14-415.12. Criteria to qualify for the issuance of a permit.

(a) The sheriff shall issue a permit to an applicant if the applicant qualifies under the following criteria:

- (1) The applicant is a citizen of the United States and has been a resident of the State 30 days or longer immediately preceding the filing of the application.
- (2) The applicant is 21 years of age or older.
- (3) The applicant does not suffer from a physical or mental infirmity that prevents the safe handling of a handgun.
- (4) The applicant has successfully completed an approved firearms safety and training course which involves the actual firing of handguns and instruction in the laws of this State governing the carrying of a concealed handgun and the use of deadly force. The North Carolina Criminal Justice Education and Training Standards Commission shall prepare and publish general guidelines for courses and qualifications of instructors which would satisfy the requirements of this subdivision. An approved course shall be any course which satisfies the requirements of this subdivision and is certified or sponsored by:

 - a. The North Carolina Criminal Justice Education and Training Standards Commission.
 - b. The National Rifle Association, or
 - c. A law enforcement agency, college, private or public institution or organization, or firearms training school, taught by instructors certified by the North Carolina Criminal Justice Education and Training Standards Commission or the National Rifle Association.

Every instructor of an approved course shall file a copy of the firearms course description, outline, and proof of certification annually, or upon modification of the course if more frequently, with the North Carolina Criminal Justice Education and Training Standards Commission.

- (5) The applicant is not disqualified under subsection (b) of this section.

(b) The sheriff shall deny a permit to an applicant who:

- (1) Is ineligible to own, possess, or receive a firearm under the provisions of State or federal law.
- (2) Has formal charges pending for a crime punishable by imprisonment for a term exceeding sixty days.

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- (3) Has been adjudicated guilty in any court of a crime punishable by imprisonment for a term exceeding sixty days.
- (4) Is a fugitive from justice.
- (5) Is an unlawful user of, or addicted to marijuana, alcohol, or any depressant, stimulant, or narcotic drug, or any other controlled substance as defined in 21 U.S.C. § 802.
- (6) Is currently, or has been previously adjudicated or administratively determined to be, lacking mental capacity or mentally ill.
- (7) Is or has been discharged from the armed forces under conditions other than honorable.
- (8) Is or has been adjudicated guilty of or received a prayer for judgment continued or suspended sentence for one or more crimes of violence constituting a misdemeanor, including but not limited to, a violation of a misdemeanor under Article 8 of Chapter 14 of the General Statutes, or a violation of a misdemeanor under G.S. 14-225.2, 14-226.1, 14-258.1, 14-269.2, 14-269.3, 14-269.4, 14-269.6, 14-276.1, 14-277, 14-277.1, 14-277.2, 14-277.3, 14-281.1, 14-283, 14-288.2, 14-288.4(a)(1) or (2), 14-288.6, 14-288.9, 14-288.12, 14-288.13, 14-288.14, 14-318.2, or 14-415.19(a), unless five years has elapsed since disposition or pardon has occurred prior to the date on which the application is submitted.
- (9) Has had entry of a prayer for judgment continued for a criminal offense which would disqualify the person from obtaining a concealed handgun permit.
- (10) Is free on bond or personal recognizance pending trial, appeal, or sentencing for a crime which would disqualify him from obtaining a concealed handgun permit.
- (11) Has been convicted of an impaired driving offense under G.S. 20-138.1, 20-138.2, or 20-138.3 within three years prior to the date on which the application is submitted.

"§ 14-415.13. Application for a permit: fingerprints.

(a) A person shall apply to the sheriff of the county in which the person resides to obtain a concealed handgun permit. The applicant shall submit to the sheriff all of the following:

- (1) An application, completed under oath, on a form provided by the sheriff.
- (2) A nonrefundable permit fee.
- (3) A full set of fingerprints of the applicant administered by a law enforcement agency of this State.
- (4) An original certificate of completion of an approved course, adopted and distributed by the North Carolina Criminal Justice Education and Training Standards Commission, signed by the certified instructor of the course attesting to the successful completion of the course by the applicant which shall verify that the applicant is competent with a handgun and knowledgeable about the laws governing the carrying of a concealed handgun and the use of deadly force.
- (5) A release, in a form to be prescribed by the Administrative Office of the Courts, that authorizes and requires disclosure to the sheriff of any records concerning the mental health or capacity of the applicant.

(b) The sheriff shall submit the fingerprints to the State Bureau of Investigation for a records check of State and national databases. The State Bureau of

Investigation shall submit the fingerprints to the Federal Bureau of Investigation as necessary. The cost of processing the set of fingerprints shall be charged to an applicant as provided by G.S. 14-415.19. The fingerprints of an applicant who is issued a permit shall be retained for future use in the event the permit is renewed, and shall be retained until any valid permit expires and is not renewed.
"§ 14-415.14. Application form to be provided by sheriff; information to be included in application form.

(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the Administrative Office of the Courts, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit.

(b) The permit application shall also contain a warning substantially as follows: 'CAUTION: Federal law and State law on the possession of handguns and firearms differ. If you are prohibited by federal law from possessing a handgun or a firearm, you may be prosecuted in federal court. A State permit is not a defense to a federal prosecution.'

"§ 14-415.15. Issuance or denial of permit.

(a) Except as permitted under subsection (b) of this section, within 90 days after receipt of the items listed in G.S. 14-415.13 from an applicant, the sheriff shall either issue or deny the permit. The sheriff may conduct any investigation necessary to determine the qualification or competency of the person applying for the permit, including record checks.

(b) Upon presentment to the sheriff of the items required under G.S. 14-415.13(a)(1), (2), and (3), the sheriff may issue a temporary permit for a period not to exceed 90 days to a person who the sheriff reasonably believes is in an emergency situation that may constitute a risk of safety to the person, the person's family or property. The temporary permit may not be renewed and may be revoked by the sheriff without a hearing.

(c) A person's application for a permit shall be denied only if the applicant fails to qualify under the criteria listed in this Article. If the sheriff denies the application for a permit, the sheriff shall, within 90 days, notify the applicant in writing, stating the grounds for denial. An applicant may appeal the denial, revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the application was filed. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal. The determination by the court shall be final.

"§ 14-415.16. Renewal of permit.

The holder of a permit shall apply to renew the permit at least 30 days prior to its expiration date by filing with the sheriff of the county in which the person resides a renewal form provided by the sheriff's office, a notarized affidavit stating that the permittee remains qualified under the criteria provided in this Article, and a renewal fee. Upon receipt of the completed renewal application and appropriate payment of fees, the sheriff shall determine if the permittee remains qualified to hold a permit in accordance with the provisions of G.S. 14-415.12. The permittee's criminal history shall be updated, and the sheriff may waive the requirement of taking another firearms safety and training course. If the permittee applies for a renewal of the permit within 30 days of its expiration date and if the permittee remains qualified to have a permit under G.S. 14-415.12, the sheriff shall renew the permit.

"§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.

The permit shall be in a certificate form, as prescribed by the Administrative Office of the Courts, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and social security number of the permittee, and the drivers license identification number used in applying for the permit. The sheriff shall maintain a listing of those persons who are issued a permit and any pertinent information regarding the issued permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system.

"§ 14-415.18. Revocation or suspension of permit.

(a) The sheriff of the county where the permit was issued or the sheriff of the county where the person resides may revoke a permit subsequent to a hearing for any of the following reasons:

- (1) Fraud or intentional or material misrepresentation in the obtaining of a permit.
- (2) Misuse of a permit, including lending or giving a permit to another person, duplicating a permit, or using a permit with the intent to unlawfully cause harm to a person or property.
- (3) The doing of an act or existence of a condition which would have been grounds for the denial of the permit by the sheriff.
- (4) The violation of any of the terms of this Article.
- (5) The applicant is adjudicated guilty of or receives a prayer for judgment continued for a crime which would have disqualified the applicant from initially receiving a permit.

A permittee may appeal the revocation, or nonrenewal of a permit by petitioning a district court judge of the district in which the applicant resides. The determination by the court, on appeal, shall be upon the facts, the law, and the reasonableness of the sheriff's refusal.

(b) The court may suspend a permit as part of and for the duration of any orders permitted under Chapter 50B of the General Statutes.

"§ 14-415.19. Fees.

(a) The permit fees assessed under this Article are payable to the sheriff. The sheriff shall transmit the proceeds of these fees to the county finance officer to be used to pay the costs of the criminal record checks and investigations required under this Article. The permit fees are as follows:

Application fee\$50.00
Renewal fee\$50.00
Duplicate permit fee\$15.00

(b) An additional fee, not to exceed ten dollars (\$10.00), shall be collected from an applicant for a permit to pay for the costs of processing the applicant's fingerprints. This fee shall be retained by the law enforcement office that processes the fingerprints.

"§ 14-415.20. No liability of sheriff.

A sheriff who issues or refuses to issue a permit to carry a concealed handgun under this Article shall not incur any civil or criminal liability as the result of the performance of the sheriff's duties under this Article.

"§ 14-415.21. Violations of this Article punishable as an infraction and a Class 2 misdemeanor.

(a) A person who has been issued a valid permit who is found to be carrying a concealed handgun without the permit in the person's possession or who fails to

disclose to any law enforcement officer that the person holds a valid permit and is carrying a concealed handgun, as required by G.S. 14-415.11, shall be guilty of an infraction for the first offense and shall be punished in accordance with G.S. 14-3.1. In lieu of paying a fine for the first offense, the person may surrender the permit. Subsequent offenses for failing to carry a valid permit or for failing to make the necessary disclosures to a law enforcement officer as required by G.S. 14-415.11 shall be punished in accordance with subsection (b) of this section.

(b) A person who violates the provisions of this Article other than as set forth in subsection (a) of this section is guilty of a Class 2 misdemeanor.

"§ 14-415.22. Construction of Article.

This Article shall not be construed to require a person who may carry a concealed handgun under the provisions of G.S. 14-269(b) to obtain a concealed handgun permit.

"§ 14-415.23. Statewide uniformity.

It is the intent of the General Assembly to prescribe a uniform system for the regulation of legally carrying a concealed handgun. To insure uniformity, no political subdivisions, boards, or agencies of the State nor any county, city, municipality, municipal corporation, town, township, village, nor any department or agency thereof, may enact ordinances, rules, or regulations concerning legally carrying a concealed handgun. A unit of local government may adopt an ordinance to permit the posting of a prohibition against carrying a concealed handgun, in accordance with G.S. 14-415.11(c), on local government buildings, their appurtenant premises, and parks."

Sec. 2. G.S. 14-269 reads as rewritten:

"§ 14-269. Carrying concealed weapons.

(a) It shall be unlawful for any person, except when on his own premises, person willfully and intentionally to carry concealed about his person any bowie knife, dirk, dagger, slung shot, loaded cane, metallic knuckles, razor, shurikin, stun gun, pistol, gun or other deadly weapon of like kind, kind, except when the person is on the person's own premises. This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, 'ordinary pocket knife' means a small knife, designed for carrying in a pocket or purse, which has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive or spring action.

(a) It shall be unlawful for any person willfully and intentionally to carry concealed about his person any pistol or gun except in the following circumstances:

- (1) The person is on the person's own premises.
- (2) The deadly weapon is a handgun, and the person has a concealed handgun permit issued in accordance with Article 54B of this Chapter.

(b) This prohibition shall not apply to the following persons:

- (1) Officers and enlisted personnel of the armed forces of the United States when in discharge of their official duties as such and acting under orders requiring them to carry arms and weapons;
- (2) Civil officers of the United States while in the discharge of their official duties;
- (3) Officers and soldiers of the militia and the national guard when called into actual service;
- (4) Officers of the State, or of any county, city, or town, charged with the execution of the laws of the State, when acting in the discharge of their official duties;
- (5) Full-time sworn Sworn law-enforcement officers, when off-duty, in the jurisdiction where they are assigned, off-duty, if:

- a. Written regulations authorizing the carrying of concealed weapons have been filed with the clerk of court in the county where the law-enforcement unit is located by the sheriff or chief of police or other superior officer in charge; and
 - b. Such regulations specifically prohibit the carrying of concealed weapons while the officer is consuming or under the influence of alcoholic beverages.
- (b1) It is a defense to a prosecution under this section that:
- (1) The weapon was not a firearm;
 - (2) The defendant was engaged in, or on the way to or from, an activity in which he legitimately used the weapon;
 - (3) The defendant possessed the weapon for that legitimate use; and
 - (4) The defendant did not use or attempt to use the weapon for an illegal purpose.

The burden of proving this defense is on the defendant.

(c) Any person violating the provisions of ~~this section~~ subsection (a) of this section shall be guilty of a Class 2 misdemeanor. Any person violating the provisions of subsection (a1) of this section shall be guilty of a Class 2 misdemeanor for the first offense. A second or subsequent offense is punishable as a Class 1 felony.

(d) This section does not apply to an ordinary pocket knife carried in a closed position. As used in this section, 'ordinary pocket knife' means a small knife, designed for carrying in a pocket or purse, that has its cutting edge and point entirely enclosed by its handle, and that may not be opened by a throwing, explosive, or spring action."

Sec. 3. This act becomes effective December 1, 1995, and applies to offenses committed on or after that date.

CHAPTER 14
CRIMINAL LAW

§ 14-454. Accessing computers.

- (a) A person is guilty of a Class H felony if he willfully, directly or indirectly, accesses or causes to be accessed any computer, computer system, computer network, or any part thereof, for the purpose of:
- (1) Devising or executing any scheme or artifice to defraud, unless the object of the scheme or artifice is to obtain educational testing material, a false educational testing score, or a false academic or vocational grade, or
 - (2) Obtaining property or services other than educational testing material, a false educational testing score, or a false academic or vocational grade for himself or another, by means of false or fraudulent pretenses, representations or promises.
- (b) Any person who willfully and without authorization, directly or indirectly, accesses or causes to be accessed any computer, computer system, computer network, or any part thereof, for any purpose other than those set forth in subsection (a) above, is guilty of a misdemeanor. (1979, c. 831, s. 1; 1979, 2nd Sess., c. 1316, s. 19.)

ARTICLE 5.

Expunction of Records.

§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, and petitioner was not 18 years old at the time of the conviction in question, it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

(c) The court shall also order that the said misdemeanor conviction be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then

transmit the copy of the order with a form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The cost of expunging such records shall be taxed against the petitioner.

(d) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts, the names of those persons granted a discharge under the provisions of this section, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge. (1973, c. 47, s. 2; c. 748; 1975, c. 650, s. 5; 1977, c. 642, s. 1; c. 699, ss. 1, 2; 1979, c. 431, ss. 1, 2; 1985, c. 636, s. 1.)

§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) If any person is charged with a crime, either a misdemeanor or a felony, and the charge is dismissed, or a finding of not guilty is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the person had not previously received an expungement and that the person had not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(b) The court may also order that the said entries shall be expunged from the records of the court, and direct all law-enforcement agencies bearing record of the same to expunge their records of the entries. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head of such other arresting agency shall then transmit the copy of the order with the form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. The costs of expunging such records shall be taxed against the petitioner.

(c) The Clerk of Superior Court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts, the names of those persons granted an expungement under the provisions of this section and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted such expungement. The information contained in such files shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense has been previously granted an expungement. (1979, c. 61; 1985, c. 636, ss. 1-7.)

*Reports of Dispositions of Criminal Cases.***§ 15A-1381. Disposition defined.**

As used in this Article, the term "disposition" means any action which results in termination or indeterminate suspension of the prosecution of a criminal charge. A disposition may be any one of the following actions:

- (1) A finding of no probable cause pursuant to G.S. 15A-511(c)(2);
- (2) An order of dismissal pursuant to G.S. 15A-604;
- (3) A finding of no probable cause pursuant to G.S. 15A-612 [15A-612(a)(3)];
- (4) A return of not a true bill pursuant to G.S. 15A-629;
- (5) Dismissal of a charge pursuant to G.S. 15A-703;
- (6) Dismissal pursuant to G.S. 15A-931 or 15A-932;
- (7) Dismissal pursuant to G.S. 15A-954, 15A-955 or 15A-959;
- (8) Finding of a defendant's incapacity to proceed pursuant to G.S. 15A-1002 or dismissal of charges pursuant to G.S. 15A-1008;
- (9) Entry of a plea of guilty or no contest pursuant to G.S. 15A-1011 without regard to the sentence imposed upon the plea, and even though prayer for judgment on the plea be continued;
- (10) Dismissal pursuant to G.S. 15A-1227;
- (11) Return of verdict pursuant to G.S. 15A-1237, without regard to the sentence imposed upon such verdict and even though prayer for judgment on such verdict be continued. (1981, c. 862, s. 1.)

§ 15A-1382. Reports of disposition; fingerprints.

(a) When the defendant is fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition.

(b) When a defendant is found guilty of any felony, regardless of the class of felony, a report of the disposition of the charges shall be made to the State Bureau of Investigation on a form supplied by the State Bureau of Investigation within 60 days following disposition. If a convicted felon was not fingerprinted pursuant to G.S. 15A-502 prior to the disposition of the case, his fingerprints shall be taken and submitted to the State Bureau of Investigation along with the report of the disposition of the charges on forms supplied by the State Bureau of Investigation. (1981, c. 862, s. 1.)

§ 15A-1383. Plans for implementation of Article; punishment for failure to comply; modification of plan.

(a) On January 1, 1982, the senior resident superior court judge of each judicial district shall file a plan with the Director of the State Bureau of

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Investigation for the implementation of the provisions of this Article. The plan shall be entered as an order of the court on that date. In drawing up the plan, the senior resident superior court judge may consult with the chief district judge, the district attorney, the clerks of superior court within the district, the Department of Correction, the sheriffs and chiefs of police within the district and other persons as he may deem appropriate. Upon the request of the senior resident superior court judge, the State Bureau of Investigation shall provide such technical assistance in the preparation of the plan as the judge desires.

b) A person who is charged by the plan with a duty to make reports who fails to make such reports as required by the plan is punishable for civil contempt under Article 2 of Chapter 5A of the General Statutes.

c) When the senior resident superior court judge modifies, alters or amends a plan under this Article, the order making such modification, alteration or amendment shall be filed with the Director of the State Bureau of Investigation within 10 days of its entry.

d) Plans prepared under this Article are not "rules" within the meaning of Chapter 150A of the General Statutes or within the meaning of Article 6C of Chapter 120 of the General Statutes. (1981, c. 862, s. 1.)

§ 15A-1384 to 15A-1390: Reserved for future codification purposes.

* * *

§ 15A-502. Photographs and fingerprints.

(a) A person charged with the commission of a felony or a misdemeanor may be photographed and his fingerprints may be taken for law-enforcement records only when he has been:

- (1) Arrested or committed to a detention facility, or
- (2) Committed to imprisonment upon conviction of a crime, or
- (3) Convicted of a felony.

It shall be the duty of the arresting law-enforcement agency to cause a person charged with the commission of a felony to be fingerprinted and to forward those fingerprints to the State Bureau of Investigation.

(b) This section does not authorize the taking of photographs or fingerprints when the offense charged is a misdemeanor under Chapter 20 of the General Statutes, "Motor Vehicles," for which the penalty authorized does not exceed a fine of five hundred dollars (\$500.00), imprisonment for six months, or both.

(c) This section does not authorize the taking of photographs or fingerprints of a juvenile except under G.S. 7A-596 through 7A-627.

(d) This section does not prevent the taking of photographs, moving pictures, video or sound recordings, fingerprints, or the like to show a condition of intoxication or for other evidentiary use.

(e) Fingerprints or photographs taken pursuant to subsection (a) may be forwarded to the State Bureau of Investigation, the Federal Bureau of Investigation, or other law-enforcement agencies. (1973, c. 1286, s. 1; 1977, c. 711, s. 22; 1979, c. 850; 1981, c. 862, s. 3.)

§ 15-223. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the two-year period that he deems desirable.

(1979, c. 431, ss. 1, 2.)

§ 15-224. Expunction of records when charges are dismissed or there are findings of not guilty.

Except as otherwise provided in G.S. 90-96, if any person is charged with a crime, either a misdemeanor or a felony, and the charge is dismissed, or a finding of not guilty is entered, that person may apply to the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his apprehension or trial. The court shall hold a hearing on the application and, upon finding that at the time any of the proceedings against him occurred the person had not attained the age of 18 years and had not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial. The clerk shall send a copy of the expunction order to any public official known to be a custodian of such entries. (1979, c. 61.)

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§ 90-96. Conditional discharge and expunction of records for first offense.

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Human Resources. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Human Resources pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

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- (1) There is no drug education school within a reasonable distance of the defendant's residence; or
- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subdivision (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purposes of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings

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- on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
 - (3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in the file shall be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, upon dismissal by the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment or information, or trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

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(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited in G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Human Resources, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

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The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction pursuant to the terms of this Article. (1971, c. 919, s. 1; 1973, c. 654, s. 2; c. 1066; 1977, 2nd Sess., c. 1147, s. 11B; 1979, c. 431, ss. 3, 4; c. 550; 1981, c. 922, ss. 1-4.)

§ 90-113.14. Conditional discharge and expunction of records for first offenses.

(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Human Resources. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of

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ART. 5A. TOXIC VAPORS ACT

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a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

(a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant on probation under this section for an offense under this Article including an offense for which the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less than one year and shall contain a minimum condition that the defendant who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of the imposition of said probation, the program of instruction at the drug education school approved by the Department of Human Resources pursuant to G.S. 90-96.01. The court may impose probation that does not contain a condition that defendant successfully complete the program of instruction at a drug education school if:

- (1) There is no drug education school within a reasonable distance of the defendant's residence; or
- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

The court shall enter such specific findings in the record; provided that in the case of subsection (2) above, such findings shall include the specific, extenuating circumstances which make it likely that the defendant will not benefit from the program of instruction.

For the purpose of determining whether the conviction is a first conviction or whether a person has already had discharge and dismissal, no prior offense occurring more than seven years before the date of the current offense shall be considered. In addition, convictions for violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the course, or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty,

and dismissal and discharge pursuant to this section. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

This subsection is supplemental and in addition to existing law and shall not be construed so as to repeal any existing provision contained in the General Statutes of North Carolina.

(b) Upon the dismissal of such person, and discharge of the proceedings against him under subsection (a) of this section, such person, if he were not over 21 years of age at the time of the offense, may apply to the court for an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the application the following:

- (1) An affidavit by the applicant that he has been of good behavior during the period of probation since the decision to defer further proceedings on the misdemeanor in question and has not been convicted of any felony, or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state;
- (2) Verified affidavits by two persons who are not related to the applicant or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which he lives, and that his character and reputation are good;
- (3) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted, and, if different, the county of which the petitioner is a resident, showing that the applicant has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the period of probation following the decision to defer further proceedings on the misdemeanor in question.

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the probationary period deemed desirable.

If the court determines, after hearing, that such person was dismissed and the proceedings against him discharged and that he was not over 21 years of age at the time of the offense, it shall enter such order. The effect of such order shall be to restore such person in the contemplation of the law to the status he occupied before such arrest or indictment or information. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him for any purpose.

The court shall also order that said conviction and the records relating thereto be expunged from the records of the court, and direct all law-enforcement agencies bearing records of the same to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police or other

arresting agency, as appropriate, and the sheriff, chief of police or other arresting agency, as appropriate, shall forward such order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

(c) The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Commission, the names of all persons convicted under such Articles, together with the offense or offenses of which such persons were convicted. The clerk shall also file with the Administrative Office of the Courts the names of those persons granted a conditional discharge under the provisions of this Article, and the Administrative Office of the Court shall maintain a confidential file containing the names of persons granted conditional discharges. The information contained in such file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A has been previously granted a conditional discharge.

(d) Whenever any person is charged with a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or other adjudication of innocence, such person may apply to the court for an order to expunge from all official records all recordation relating to his arrest, indictment, or information, and trial. If the court determines, after hearing that such person was not over 21 years of age at the time any of the proceedings against him occurred, it shall enter such order. No person as to whom such order has been entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made of him for any purpose.

(e) Whenever any person who has not previously been convicted of an offense under this Article or under any statute of the United States or any state relating to controlled substances included in any schedule of this Article or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article, the court may, upon application of the person not sooner than 12 months after conviction, order cancellation of the judgment of conviction and expunction of the records of his arrest, indictment, or information, trial and conviction. A conviction in which the judgment of conviction has been cancelled and the records expunged pursuant to this section shall not be thereafter deemed a conviction for purposes of this section or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions of this Article. Cancellation and expunction under this section may occur only once with respect to any person. Disposition of a case under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal.

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The granting of an application filed under this section shall cause the issue of an order to expunge from all official records (other than the confidential file to be retained by the Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment, and expunction of records pursuant to this section.

The judge to whom the petition is presented is authorized to call upon a probation officer for additional investigation or verification of the petitioner's conduct since conviction. If the court determines that the petitioner was convicted of a misdemeanor under this Article for possessing a controlled substance included within Schedules II through VI of this Article, or for possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been of good behavior since his conviction, that he has successfully completed a drug education program approved for this purpose by the Department of Human Resources, and that he has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to or since the conviction for the misdemeanor in question, it shall enter an order of expunction of the petitioner's court record. The effect of such order shall be to restore the petitioner in the contemplation of the law to the status he occupied before such arrest or indictment or information or conviction. No person as to whom such order was entered shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him for any purpose. The judge may waive the condition that the petitioner attend the drug education school if the judge makes a specific finding that there was no drug education school within a reasonable distance of the defendant's residence or that there were specific extenuating circumstances which made it likely that the petitioner would not benefit from the program of instruction.

The court shall also order that all law-enforcement agencies bearing records of the conviction and records relating thereto to expunge their records of the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of Investigation.

The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court in his county, file with the Administrative Office of the Courts the names of those persons whose judgments of convictions have been cancelled and expunged under the provisions of this Article, and the Administrative Office of the Courts shall maintain a confidential file containing the names of persons whose judgments of convictions have been cancelled and expunged. The information contained in the file shall be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining whether any person charged with an offense under this Article has been previously granted cancellation and expunction of a judgment of conviction

pursuant to the terms of this Article. (1971, c. 1078; 1975, c. 650, ss. 3, 4; 1977, c. 642, s. 3; 1979, c. 431, ss. 3, 4; 1981, c. 51, s. 11; c. 922, ss. 5-7.)

"§ 110-90.2. Mandatory day care providers' criminal history checks.

(a) For purposes of this section:

- (1) 'Child day care', notwithstanding the definition in G.S. 110-86, means any child day care provided in child day care facilities and child day care homes, including child day care facilities and child day care homes required to be licensed or registered under this Article and nonregistered child day care homes approved to receive or receiving State or federal funds for providing child day care.
- (2) 'Child day care provider' means a person who:
 - a. Is employed by or seeks to be employed by a child day care facility or child day care home providing child day care as defined in subdivision (1) of this subsection; or
 - b. Owns or operates or seeks to own or operate a child day care facility or child day care home providing child day care as defined in subdivision (1) of this subsection.
- (3) 'Criminal history' means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children as set forth in G.S. 110-90.1. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such

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. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.

(b) Effective January 1, 1996, the Department shall ensure that the criminal history of all child day care providers is checked and a determination is made of the child day care provider's fitness to have responsibility for the safety and well-being of children based on the criminal history. The Department shall ensure that child day care providers who have lived in North Carolina continuously for the previous five years are checked for county and State criminal histories. The Department shall ensure that all other child day care providers are checked for county, State, and national criminal histories. The Department may prohibit a child day care provider from providing child day care if the Department determines that the child day care provider is unfit to have responsibility for the safety and well-being of children based on the criminal history, in accordance with G.S. 110-90.1.

(c) The Department of Justice shall provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories of any child day care provider as requested by the Division.

The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories signed by the child day care provider to be checked. The fingerprints of the provider shall be forwarded to the State Bureau of Investigation for a search of their 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.

At the time of application the day care provider whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

CHILD DAY CARE PROVIDER
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE CHILD DAY CARE IN A LICENSED OR REGISTERED CHILD DAY CARE FACILITY, AND ALL PERSONS PROVIDING CHILD DAY CARE IN NONREGISTERED CHILD DAY CARE HOMES THAT RECEIVE STATE OR FEDERAL FUNDS.

"Criminal history" includes county, state, and federal convictions or pending indictments of any of the following crimes: the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59,

Public Intoxication; 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; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you disagree with the determination of the North Carolina Department of Human Resources on your fitness to provide child day care, you may file a civil lawsuit in the district court in the county where you live.

Any child day care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to prohibit the child day care provider from providing child day care. Any child day care provider who intentionally falsifies any information required to be furnished to conduct the criminal history shall be guilty of a Class 2 misdemeanor.

(d) The Department shall notify in writing the child day care provider, and the child day care provider's employer, if any, of the determination by the Department whether the day care provider is qualified to provide child day care based on the child day care provider's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the child day care provider's criminal history to the child day care provider or the child day care provider's employer. The Department shall also notify the child day care provider of the procedure for completing or challenging the accuracy of the criminal history and the child day care provider's right to contest the Department's determination in court.

A child day care provider who disagrees with the Department's decision may file a civil action in the district court of the county of residence of the child day care provider.

(e) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(f) There shall be no liability for negligence on the part of an employer of a child day care provider, an owner or operator of a child day care home or facility, a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(g) The child day care provider who seeks to be employed in child day care and the child day care provider who seeks to own or operate child day care shall pay the

cost of the fingerprinting and the local check at the time the child day care provider seeks to provide child day care. The Department of Justice shall perform the State criminal history check. The Department of Human Resources shall bear the costs of obtaining the State criminal history check. If the Department determines that a day care provider who has lived continuously in the State less than five years is not disqualified based on the local and State criminal history record check, the Department shall request a criminal history check from the National Repository of Criminal History from the Department of Justice. The Department of Human Resources shall pay the cost for the national criminal history record check."

(b) Article 2 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-19.5. Criminal record checks of child day care providers.

The Department of Justice may provide to the Division of Child Development, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories in accordance with G.S. 110-90.2, of any child day care provider, as defined in G.S. 110-90.2. The Division shall provide to the Department of Justice, along with the request, the fingerprints of the provider to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the child day care provider to be checked. The Division shall keep all information pursuant to this section privileged, as provided in G.S. 110-90.2(e). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

(c) The North Carolina Child Day Care Commission shall adopt rules to implement this section, in consultation with the Divisions of Child Development and Social Services of the Department of Human Resources, and the Division of Criminal Information of the Department of Justice.

(d) The Legislative Research Commission shall study the issue of using the records in the Central Registry on Child Abuse and Neglect for the purpose of conducting records checks of child day care providers. In its study, the Commission shall evaluate current procedures for substantiating claims of child abuse or neglect and for maintaining records in the Central Registry, and shall determine what procedures should be implemented to (i) ensure that records are accurate, (ii) provide appropriate notice to interested parties, (iii) provide for expungement or correction of information, and (iv) provide for release of information. The Commission shall report its findings and recommendations to the 1997 General Assembly.

(e) Subsection (d) of this section is effective upon ratification. The remainder of this section becomes effective January 1, 1996, and as defined in this section, applies to all child day care providers providing child day care as of that date, to all child day care providers newly hired in child day care employment, and to all child day care providers newly owning or operating child day care, on or after that date.

Requested by: Senators Odom, Plyler, Perdue, Martin of Guilford, Forrester, Representatives Shubert, Holmes, Creech, Esposito, Gardner, Hayes, Nye
MANDATE CRIMINAL HISTORY CHECKS OF ALL FOSTER PARENTS IN LICENSED FAMILY FOSTER HOMES

Sec. 23.26. (a) G.S. 131D-10.2 reads as rewritten:

"§ 131D-10.2. Definitions.

For purposes of this Article, unless the context clearly implies otherwise:

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- (1) 'Adoption' means the act of creating a legal relationship between parent and child where it did not exist genetically.
- (2) 'Adoptive Home' means a family home approved by a child placing agency to accept a child for adoption.
- (3) 'Child' means an individual less than 18 years of age, who has not been emancipated under the provisions of Article 56 of Chapter 7A of the General Statutes.
- (4) 'Child Placing Agency' means a person authorized by statute or license under this Article to receive children for purposes of placement in residential group care, family foster homes or adoptive homes.
- (5) 'Children's Camp' means a residential child-care facility which provides foster care at either a permanent camp site or in a wilderness setting.
- (6) 'Commission' means the ~~Commission for Social Services~~. Social Services Commission.
- (6a) 'Criminal History' means a county, state, or federal criminal history of conviction or a pending indictment of a crime, whether a misdemeanor or a felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of children, including the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication. Such 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. In addition to the North Carolina crimes listed in this subdivision, such crimes also include similar crimes under federal law or under the laws of other states.
- (7) 'Department' means the Department of Human Resources.
- (8) 'Family Foster Home' means the private residence of one or more individuals who permanently reside as members of the household and who provide continuing full-time foster care for a child or children who are placed there by a child placing agency or who provide continuing full-time foster care for two or more children who are unrelated to the adult members of the household by blood, marriage, guardianship or adoption.
- (9) 'Foster Care' means the continuing provision of the essentials of daily living on a 24-hour basis for dependent, neglected, abused, abandoned, destitute, orphaned, undisciplined or delinquent children or other children who, due to similar problems of behavior or family conditions, are living apart from their parents, relatives, or guardians in a family foster home or residential child-care facility. The essentials of daily living include but are not limited to shelter, meals, clothing, education, recreation, and individual attention and supervision.

- (9a) 'Foster Parent' means any individual who is 18 years of age or older who permanently resides in a family foster home licensed by the State and any such individual applying to provide family foster care.
- (10) 'Person' means an individual, partnership, joint-stock company, trust, voluntary association, corporation, agency, or other organization or enterprise doing business in this State, whether or not for profit.
- (11) 'Primarily Educational Institution' means any institution which operates one or more scholastic or vocational and technical education programs that can be offered in satisfaction of compulsory school attendance laws, in which the primary purpose of the housing and care of children is to meet their educational needs, provided such institution has complied with Article 39 of Chapter 115C of the General Statutes.
- (12) 'Provisional License' means a type of license granted by the Department to a person who is temporarily unable to comply with a rule or rules adopted under this Article.
- (13) 'Residential Child-Care Facility' means a staffed premise with paid or volunteer staff where children receive continuing full-time foster care. Residential child-care facility includes child-caring institutions, group homes, and children's camps which provide foster care."

(b) Article 1A of Chapter 131D of the General Statutes is amended by adding a new section to read:

"§ 131D-10.3A. Mandatory criminal checks of foster parents.

(a) Effective January 1, 1996, the Department shall ensure that the criminal histories of all foster parents are checked and a determination of the foster parent's fitness to have responsibility for the safety and well-being of children based on the criminal history is made. The Department shall ensure that, as of the effective date of this act, all foster parents are checked for county, state, and federal criminal histories.

(b) The Department shall ensure that all foster parents who have been checked pursuant to subsection (a) of this section are checked annually upon relicensure for county and State criminal histories.

(c) The Department may prohibit a foster parent from providing foster care by denying or revoking the license to provide foster care if the Department determines that the foster parent is unfit to have responsibility for the safety and well-being of children based on the criminal history.

(d) The Department of Justice shall provide to the Department of Human Resources the criminal history of the foster parent obtained from the State and National Repositories of Criminal Histories as requested by the Department. The Department shall provide to the Department of Justice, along with the request, the fingerprints of the foster parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the foster parent to be checked. The fingerprints of the foster parent shall be forwarded to the State Bureau of Investigation for a search of the State's 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.

(e) At the time of application, the foster parent whose criminal history is to be checked shall be furnished with a statement substantially similar to the following:

'NOTICE

FOSTER PARENT
MANDATORY CRIMINAL HISTORY CHECK

NORTH CAROLINA LAW REQUIRES THAT A CRIMINAL HISTORY CHECK BE CONDUCTED ON ALL PERSONS WHO PROVIDE FOSTER CARE IN A LICENSED FAMILY FOSTER HOME.

"Criminal history" includes any county, state, and federal convictions or pending indictments of any crime, of any of the following crimes; the following Articles of Chapter 14 of the General Statutes: Article 6, Homicide; Article 7A, Rape and Kindred 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 26, Offenses Against Public Morality and Decency; Article 27, Prostitution; Article 39, Protection of Minors; Article 40, Protection of the Family; and Article 59, Public Intoxication; 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; or similar crimes under federal law or under the laws of other states. Your fingerprints will be used to check the criminal history records of the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI).

If it is determined, based on your criminal history, that you are unfit to have responsibility for the safety and well-being of children, you shall have the opportunity to complete, or challenge the accuracy of, the information contained in the SBI or FBI identification records.

If you are denied licensure or your foster home license is revoked by the Department of Human Resources as a result of the criminal history check, you may request a hearing pursuant to Article 3 of Chapter 150B of the General Statutes, the Administrative Procedure Act.

Any foster parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.'

Refusal to consent to a criminal history check is grounds for the Department to prohibit the foster parent from providing foster care. Any foster parent who intentionally falsifies any information required to be furnished to conduct the criminal history is guilty of a Class 2 misdemeanor.

(f) The Department shall notify in writing the foster parent and that individual's supervising agency of the determination by the Department of whether the foster parent is qualified to provide foster care based on the foster parent's criminal history. In accordance with the law regulating the dissemination of the contents of the criminal history file furnished by the Federal Bureau of Investigation, the Department shall not release nor disclose any portion of the foster parent's criminal history to the foster parent. The Department shall also notify the foster parent of the foster parent's right to review the criminal history information, the procedure for completing or challenging the accuracy of the criminal history, and the foster parent's right to contest the Department's determination.

A foster parent who disagrees with the Department's decision may request a hearing pursuant to Chapter 150B of the General Statutes, the Administrative Procedure Act.

(g) All the information that the Department receives through the checking of the criminal history is privileged information and is not a public record but is for the exclusive use of the Department and those persons authorized under this section to receive the information. The Department may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(h) There is no liability for negligence on the part of a supervising agency, or a State or local agency, or the employees of a State or local agency, arising from any action taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Article 31A of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Torts Claim Act, as set forth in Article 31 of Chapter 143 of the General Statutes.

(i) The Department of Justice shall perform the State and national criminal history checks on foster parents and shall charge the Department of Human Resources a reasonable fee only for conducting the checks of the national criminal history records authorized by this section. The Division of Social Services, Department of Human Resources, shall bear the costs of implementing this section."

(c) Article 4 of Chapter 114 of the General Statutes is amended by adding a new section to read:

"§ 114-19.4. Criminal record checks of foster parents.

The Department of Justice may provide to the Division of Social Services, Department of Human Resources, the criminal history from the State and National Repositories of Criminal Histories as defined in G.S. 131D-10.2(6a). The Division shall provide to the Department of Justice, along with the request, the fingerprints of the foster parent to be checked, any additional information required by the Department of Justice, and a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the State or National Repositories signed by the foster parent to be checked. The fingerprints of the foster parent shall be forwarded to the State Bureau of Investigation for a search of the State's 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 Division shall keep all information pursuant to this section privileged, as provided in G.S. 131D-10.3A(g). The Department of Justice shall charge a reasonable fee only for conducting the checks of the national criminal history records authorized by this section."

(d) The Department of Human Resources and the Social Services Commission, upon consultation with the Division of Social Services of the Department of Human Resources and the Division of Criminal Information of the Department of Justice, shall adopt rules to implement this act.

(e) Subsections (a), (b), and (c) of this section become effective January 1, 1996, and apply to foster parents providing care on or after that date, to applicants for foster parent licenses on or after that date, and to foster parents whose licenses are being considered for renewal on or after that date. The remainder of this section is effective upon ratification.

"Part 6. Criminal History Checks.

"§ 115C-332. School personnel criminal history checks.

(a) As used in this section:

(1) 'Criminal history' means a county, state, or federal criminal history of conviction of a crime, whether a misdemeanor or a felony, that indicates the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel. Such crimes include the following North Carolina crimes contained in any of the following Articles of Chapter 14 of the General Statutes: Article 5A, Endangering Executive and Legislative Officers; Article 6, Homicide; Article 7A, Rape and Kindred 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 Pretense and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 20, Frauds; Article 21, Forgery; 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 and Civil Disorders; Article 39, Protection of Minors; and Article 60, Computer-Related Crime. Such 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. In addition to the North Carolina crimes listed in this subparagraph, such crimes also include similar crimes under federal law or under the laws of other states.

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- (2) 'School personnel' means any:
- a. Employee of a local board of education whether full-time or part-time, or
 - b. Independent contractor or employee of an independent contractor of a local board of education, if the independent contractor carries out duties customarily performed by school personnel,
whether paid with federal, State, local, or other funds, who has significant access to students. School personnel includes substitute teachers, driver training teachers, bus drivers, clerical staff, and custodians.

(b) Each local board of education shall adopt a policy on whether and under what circumstances an applicant for a school personnel position shall be required to be checked for a criminal history before the applicant is offered an unconditional job. Each local board of education shall apply its policy uniformly in requiring applicants for school personnel positions to be checked for a criminal history. A local board of education that requires a criminal history check for an applicant may employ an applicant conditionally while the board is checking the person's criminal history and making a decision based on the results of the check.

A local board of education shall not require an applicant to pay for the criminal history check authorized under this subsection.

(c) The Department of Justice shall provide to the local board of education the criminal history from the State and National Repositories of Criminal Histories of any applicant for a school personnel position in the local school administrative unit for which a local board of education requires a criminal history check. The local board of education shall require the person to be checked by the Department of Justice to (i) be fingerprinted and to provide any additional information required by the Department of Justice to a person designated by the local board, or to the local sheriff or the municipal police, whichever is more convenient for the person, and (ii) sign a form consenting to the check of the criminal record and to the use of fingerprints and other identifying information required by the repositories. The local board of education shall consider refusal to consent when making employment decisions and decisions with regard to independent contractors.

The local board of education shall not require an applicant to pay for being fingerprinted.

(d) The local board of education shall review the criminal history it receives on a person. The local board shall determine whether the results of the review indicate that the employee (i) poses a threat to the physical safety of students or personnel, or (ii) has demonstrated that he or she does not have the integrity or honesty to fulfill his or her duties as public school personnel and shall use the information when making employment decisions and decisions with regard to independent contractors. The local board shall make written findings with regard to how it used the information when making employment decisions and decisions with regard to independent contractors.

(e) The local board of education shall provide to the State Board of Education the criminal history it receives on a person who is certificated, certified, or licensed by the State Board of Education. The State Board of Education shall review the criminal history and determine whether the person's certificate or license should be revoked in accordance with State laws and rules regarding revocation.

(f) All the information received by the local board of education through the checking of the criminal history or by the State Board of Education in accordance with subsection (d) of this section is privileged information and is not a public record but is for the exclusive use of the local board of education or the State Board of

Education. The local board of education or the State Board of Education may destroy the information after it is used for the purposes authorized by this section after one calendar year.

(g) There shall be no liability for negligence on the part of a local board of education, or its employees, or the State Board of Education, or its employees, arising from any act taken or omission by any of them in carrying out the provisions of this section. The immunity established by this subsection shall not extend to gross negligence, wanton conduct, or intentional wrongdoing that would otherwise be actionable. The immunity established by this subsection shall be deemed to have been waived to the extent of indemnification by insurance, indemnification under Articles 31A and 31B of Chapter 143 of the General Statutes, and to the extent sovereign immunity is waived under the Tort Claims Act, as set forth in Chapter 31 of Chapter 143 of the General Statutes."

Sec. 2. G.S. 114-19.2(a) reads as rewritten:

"(a) The Department of Justice may provide a criminal record check to the local board of education of a person who is employed in a public school in that local school district or of a person who has applied for employment in a public school in that local school district, if the employee or applicant consents to the record check. The Department may also provide a criminal record check of school personnel as defined in G.S. 115C-332 by fingerprint card to the local board of education from National Repositories of Criminal Histories, in accordance with G.S. 115C-332. The information shall be kept confidential by the local board of education as provided in Article 21A of Chapter 115C."

Sec. 3. The State Board of Education, in consultation with the Division of Criminal Information of the Department of Justice, shall adopt rules to implement this act.

Sec. 4. This act becomes effective July 1, 1995.

Public Records

§ 132-1. "Public records" defined. — "Public record" or "public records" shall mean all documents, papers, letters, maps, books, photographs, films, sound recordings, magnetic or other tapes, electronic data-processing records, artifacts, or other documentary material, regardless of physical form or characteristics, made or received pursuant to law or ordinance in connection with the transaction of public business by any agency of North Carolina government or its subdivisions. Agency of North Carolina government or its subdivisions shall mean and include every public office, public officer or official (State or local, elected or appointed), institution, board, commission, bureau, council, department, authority or other unit of government of the State or of any county, unit, special district or other political subdivision of government. (1935, c. 265, s. 1; 1975, c. 787, s. 1)

(b) At any time after the filing of the petition set out in subsection (a) or contemporaneous with such filing, the public official seeking the return of the public records may by ex parte petition request the judge or the court in which the action was filed to grant one of the following provisional remedies:

- (1) An order directed at the sheriff commanding him to seize the materials which are the subject of the action and deliver the same to the court under the circumstances hereinafter set forth; or
- (2) A preliminary injunction preventing the sale, removal, disposal or destruction of or damage to such public records pending a final judgment by the court.

(c) The judge or court aforesaid shall issue an order of seizure or grant a preliminary injunction upon receipt of an affidavit from the petitioner which alleges that the materials at issue are public records and that unless one of said provisional remedies is granted, there is a danger that such materials shall be sold, secreted, removed out of the State or otherwise disposed of so as not to be forthcoming to answer the final judgment of the court respecting the same; or that such property may be destroyed or materially damaged or injured if not seized or if injunctive relief is not granted.

(d) The aforementioned order of seizure or preliminary injunction shall issue without notice to the respondent and without the posting of any bond or other security by the petitioner. (1975, c. 787, s. 2)

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Section 1. Existing G.S. 132-1 is redesignated as subsection (a), and a new subsection is added to read:

"(b) The public records and public information compiled by the agencies of North Carolina government or its subdivisions are the property of the people. Therefore, it is the policy of this State that the people may obtain copies of their public records and public information free or at minimal cost unless otherwise specifically provided by law. As used herein, 'minimal cost' shall mean the actual cost of reproducing the public record or public information."

§ 132-1.4. Criminal investigations; intelligence information records.

(a) Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information compiled by public law enforcement agencies are not public records as defined by G.S. 132-1. Records of criminal investigations conducted by public law enforcement agencies or records of criminal intelligence information may be released by order of a court of competent jurisdiction.

(b) As used in this section:

- (1) "Records of criminal investigations" means all records or any information that pertains to a person or group of persons that is compiled by public law enforcement agencies for the purpose of attempting to prevent or solve violations of the law, including information derived from witnesses, laboratory tests, surveillance, investigators, confidential informants, photographs, and measurements.
- (2) "Records of criminal intelligence information" means records or information that pertain to a person or group of persons that is compiled by a public law enforcement agency in an effort to anticipate, prevent, or monitor possible violations of the law.
- (3) "Public law enforcement agency" means a municipal police department, a county police department, a sheriff's department, a company police agency commissioned by the Attorney General pursuant to G.S. 74E-1, et seq., and any State or local agency, force, department, or unit responsible for investigating, preventing, or solving violations of the law.
- (4) "Violations of the law" means crimes and offenses that are prosecutable in the criminal courts in this State or the United States and infractions as defined in G.S. 14-3.1.
- (5) "Complaining witness" means an alleged victim or other person who reports a violation or apparent violation of the law to a public law enforcement agency.

(c) Notwithstanding the provisions of this section, and unless otherwise prohibited by law, the following information shall be public records within the meaning of G.S. 132-1.

- (1) The time, date, location, and nature of a violation or apparent violation of the law reported to a public law enforcement agency.
- (2) The name, sex, age, address, employment, and alleged violation of law of a person arrested, charged, or indicted.
- (3) The circumstances surrounding an arrest, including the time and place of the arrest, whether the arrest involved resistance, possession or use of weapons, or pursuit, and a description of any items seized in connection with the arrest.
- (4) The contents of "911" and other emergency telephone calls received by or on behalf of public law enforcement agencies, except for such contents that reveal the name, address, telephone number, or other information that may identify the caller, victim, or witness.

(5) The contents of communications between or among employees of public law enforcement agencies that are broadcast over the public airways.

(6) The name, sex, age, and address of a complaining witness.

(d) A public law enforcement agency shall temporarily withhold the name or address of a complaining witness if release of the information is reasonably likely to pose a threat to the mental health, physical health, or personal safety of the complaining witness or materially compromise a continuing or future criminal investigation or criminal intelligence operation. Information temporarily withheld under this subsection shall be made available for release to the public in accordance with G.S. 132-6 as soon as the circumstances that justify withholding it cease to exist. Any person denied access to information withheld under this subsection may apply to a court of competent jurisdiction for an order compelling disclosure of the information. In such action, the court shall balance the interests of the public in disclosure against the interests of the law enforcement agency and the alleged victim in withholding the information. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(e) If a public law enforcement agency believes that release of information that is a public record under subdivisions (c)(1) through (c)(5) of this section will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation, it may seek an order from a court of competent jurisdiction to prevent disclosure of the information. In such action the law enforcement agency shall have the burden of showing by a preponderance of the evidence that disclosure of the information in question will jeopardize the right of the State to prosecute a defendant or the right of a defendant to receive a fair trial or will undermine an ongoing or future investigation. Actions brought pursuant to this subsection shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(f) Nothing in this section shall be construed as authorizing any public law enforcement agency to prohibit or prevent another public agency having custody of a public record from permitting the inspection, examination, or copying of such public record in compliance with G.S. 132-6. The use of a public record in connection with a criminal investigation or the gathering of criminal intelligence shall not affect its status as a public record.

(g) Disclosure of records of criminal investigations and criminal intelligence information that have been transmitted to a district attorney or other attorney authorized to prosecute a violation of law shall be governed by this section and Chapter 15A of the General Statutes.

(h) Nothing in this section shall be construed as requiring law enforcement agencies to disclose the following:

(1) Information that would not be required to be disclosed under Chapter 15A of the General Statutes; or

(2) Information that is reasonably likely to identify a confidential informant.

(i) Law enforcement agencies shall not be required to maintain any tape recordings of "911" or other communications for more than

30 days from the time of the call, unless a court of competent jurisdiction orders a portion sealed.

(j) When information that is not a public record under the provisions of this section is deleted from a document, tape recording, or other record, the law enforcement agency shall make clear that a deletion has been made. Nothing in this subsection shall authorize the destruction of the original record.

(k) The following court records are public records and may be withheld only when sealed by court order: arrest and search warrants that have been returned by law enforcement agencies, indictments, criminal summons, and nontestimonial identification orders.

(l) Records of investigations of alleged child abuse shall be governed by G.S. 7A-675. (1993, c. 461, s. 1.)

CHAPTER 132. PUBLIC RECORDS

N.C. Gen. Stat. @ 132-6 (1994)

"§ 132-6. Inspection and examination of records.

(a) Every person having custody custodian of public records shall permit them to be any record in the custodian's custody to be inspected and examined at reasonable times and under his reasonable supervision by any person, and he shall shall, as promptly as possible, furnish certified copies thereof on upon payment of any fees as may be prescribed by law. As used herein, 'custodian' does not mean an agency that holds the public records of other agencies solely for purposes of storage or safekeeping or solely to provide data processing.

(b) No person requesting to inspect and examine public records, or to obtain copies thereof, shall be required to disclose the purpose or motive for the request.

(c) No request to inspect, examine, or obtain copies of public records shall be denied on the grounds that confidential information is commingled with the requested nonconfidential information. If it is necessary to separate confidential from nonconfidential information in order to permit the inspection, examination, or copying of the public records, the public agency shall bear the cost of such separation on the following schedule:

State agencies after June 30, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, after June 30, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

(d) Notwithstanding the foregoing provisions of subsections (a) and (b) of this section, public records relating to the proposed expansion or location of specific business or industrial projects in the State may be withheld so long as their

inspection, examination or copying would frustrate the purpose for which such public records were created; provided, however, that nothing herein shall be construed to permit the withholding of public records relating to general economic development policies or activities.

(e) The application of this Chapter is subject to the provisions of Article 1 of Chapter 121 of the General Statutes, the North Carolina Archives and History Act.

(f) Notwithstanding the provisions of subsection (a) of this section, the inspection or copying of any public record which, because of its age or condition could be damaged during inspection or copying, may be made subject to reasonable restrictions intended to preserve the particular record."

Sec. 3. Chapter 132 of the General Statutes is amended by adding two new sections to read:

"§ 132-6.1. Electronic data-processing records.

(a) After June 30, 1996, no public agency shall purchase, lease, create, or otherwise acquire any electronic data-processing system for the storage, manipulation, or retrieval of public records unless it first determines that the system will not impair or impede the agency's ability to permit the public inspection and examination, and to provide electronic copies of such records. Nothing in this subsection shall be construed to require the retention by the public agency of obsolete hardware or software.

(b) Every public agency shall create an index of computer databases compiled or created by a public agency on the following schedule:

State agencies by July 1, 1996;

Municipalities with populations of 10,000 or more, counties with populations of 25,000 or more, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1997;

Municipalities with populations of less than 10,000, counties with populations of less than 25,000, as determined by the 1990 U.S. Census, and public hospitals in those counties, by July 1, 1998;

Political subdivisions and their agencies that are not otherwise covered by this schedule, after June 30, 1998.

The index shall be a public record and shall include, at a minimum, the following information with respect to each database listed therein: a list of the data fields; a description of the format or record layout; information as to the frequency with which the database is updated; a list of any data fields to which public access is restricted; a description of each form in which the database can be copied or reproduced using the agency's computer facilities; and a schedule of fees for the production of copies in each available form. Electronic databases compiled or created prior to the date by which the index must be created in accordance with this subsection may be indexed at the public agency's option. The form, content, language, and guidelines for the index and the databases to be indexed shall be developed by the Division of Archives and History in consultation with officials at other public agencies.

(c) Nothing in this section shall require a public agency to create a computer database that the public agency has not otherwise created or is not otherwise required to be created. Nothing in this section requires a public agency to disclose its software security, including passwords.

(d) The following definitions apply in this section:

- (1) Computer database. -- A structured collection of data or documents residing in a database management program or spreadsheet software.
- (2) Computer hardware. -- Any tangible machine or device utilized for the electronic storage, manipulation, or retrieval of data.

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- (3) Computer program. -- A series of instructions or statements that permit the storage, manipulation, and retrieval of data within an electronic data-processing system, together with any associated documentation. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.
- (4) Computer software. -- Any set or combination of computer programs. The term does not include the original data, or any analysis, compilation, or manipulated form of the original data produced by the use of the program or software.
- (5) Electronic data-processing system. -- Computer hardware, computer software, or computer programs or any combination thereof, regardless of kind or origin.

"§ 132-6.2. Provisions for copies of public records; fees.

(a) Persons requesting copies of public records may elect to obtain them in any and all media in which the public agency is capable of providing them. No request for copies of public records in a particular medium shall be denied on the grounds that the custodian has made or prefers to make the public records available in another medium. The public agency may assess different fees for different media as prescribed by law.

(b) Persons requesting copies of public records may request that the copies be certified or uncertified. The fees for certifying copies of public records shall be as provided by law. Except as otherwise provided by law, no public agency shall charge a fee for an uncertified copy of a public record that exceeds the actual cost to the public agency of making the copy. For purposes of this subsection, 'actual cost' is limited to direct, chargeable costs related to the reproduction of a public record as determined by generally accepted accounting principles and does not include costs that would have been incurred by the public agency if a request to reproduce a public record had not been made. Notwithstanding the provisions of this subsection, if the request is such as to require extensive use of information technology resources or extensive clerical or supervisory assistance by personnel of the agency involved, or if producing the record in the medium requested results in a greater use of information technology resources than that established by the agency for reproduction of the volume of information requested, then the agency may charge, in addition to the actual cost of duplication, a special service charge, which shall be reasonable and shall be based on the actual cost incurred for such extensive use of information technology resources or the labor costs of the personnel providing the services, or for a greater use of information technology resources that is actually incurred by the agency or attributable to the agency. If anyone requesting public information from any public agency is charged a fee that the requester believes to be unfair or unreasonable, the requester may ask the Information Resource Management Commission to mediate the dispute.

(c) Persons requesting copies of computer databases may be required to make or submit such requests in writing. Custodians of public records shall respond to all such requests as promptly as possible. If the request is granted, the copies shall be provided as soon as reasonably possible. If the request is denied, the denial shall be accompanied by an explanation of the basis for the denial. If asked to do so, the person denying the request shall, as promptly as possible, reduce the explanation for the denial to writing.

(d) Nothing in this section shall be construed to require a public agency to respond to requests for copies of public records outside of its usual business hours.

(e) Nothing in this section shall be construed to require a public agency to respond to a request for a copy of a public record by creating or compiling a record

that does not exist. If a public agency, as a service to the requester, voluntarily elects to create or compile a record, it may negotiate a reasonable charge for the service with the requester. Nothing in this section shall be construed to require a public agency to put into electronic medium a record that is not kept in electronic medium."

Sec. 4. G.S. 132-9 reads as rewritten:

"§ 132-9. Access to records.

(a) Any person who is denied access to public records for purposes of inspection, examination or copying inspection and examination, or who is denied copies of public records, may apply to the appropriate division of the General Court of Justice for an order compelling disclosure, disclosure or copying, and the court shall have jurisdiction to issue such orders. Actions brought pursuant to this section shall be set down for immediate hearing, and subsequent proceedings in such actions shall be accorded priority by the trial and appellate courts.

(b) In an action to compel disclosure of public records which have been withheld pursuant to the provisions of G.S. 132-6 concerning public records relating to the proposed expansion or location of particular businesses and industrial projects, the burden shall be on the custodian withholding the records to show that disclosure would frustrate the purpose of attracting that particular business or industrial project.

(c) In any action brought pursuant to this section in which a party successfully compels the disclosure of public records, the court may, in its discretion, allow the prevailing party to recover reasonable attorneys' fees if:

- (1) The court finds that the agency acted without substantial justification in denying access to the public records; and
- (2) The court finds that there are no special circumstances that would make the award of attorneys' fees unjust.

Any attorneys' fees assessed against a public agency under this section shall be charged against the operating expenses of the agency; provided, however, that the court may order that all or any portion of any attorneys' fees so assessed be paid personally by any public employee or public official found by the court to have knowingly or intentionally committed, caused, permitted, suborned, or participated in a violation of this Article. No order against any public employee or public official shall issue in any case where the public employee or public official seeks the advice of an attorney and such advice is followed.

(d) If the court determines that an action brought pursuant to this section was filed in bad faith or was frivolous, the court may, in its discretion, assess a reasonable attorney's fee against the person or persons instituting the action and award it to the public agency as part of the costs."

Sec. 5. Chapter 132 of the General Statutes is amended by adding a new section to read:

"§ 132-10. Qualified exception for geographical information systems.

Geographical information systems databases and data files developed and operated by counties and cities are public records within the meaning of this Chapter. The county or city shall provide public access to such systems by public access terminals or other output devices. Upon request, the county or city shall furnish copies, in documentary or electronic form, to anyone requesting them at reasonable cost. As a condition of furnishing an electronic copy, whether on magnetic tape, magnetic disk, compact disk, or photo-optical device, a county or city may require that the person obtaining the copy agree in writing that the copy will not be resold or otherwise used for trade or commercial purposes. For purposes of this section, publication or broadcast by the news media shall not constitute a resale or use of the data for trade or commercial purposes and use of information without resale by a licensed

professional in the course of practicing the professional's profession shall not constitute use for a commercial purpose."

§ 132-7. Keeping records in safe places; copying or repairing; certified copies.—Insofar as possible, custodians of public records shall keep them in fireproof safes, vaults, or rooms fitted with noncombustible materials and in such arrangement as to be easily accessible for convenient use. All public records should be kept in the buildings in which they are ordinarily used. Record books should be copied or repaired, renovated or rebound if worn, mutilated, damaged or difficult to read. Whenever any State, county, or municipal records are in need of repair, restoration, or rebinding, the head of such State agency, department, board, or commission, the board of county commissioners of such county, or the governing body of such municipality may authorize that the records in need of repair, restoration, or rebinding be removed from the building or office in which such records are ordinarily kept, for the length of time required to repair, restore, or rebind them. Any public official who causes a record book to be copied shall attest it and shall certify on oath that it is an accurate copy of the original book. The copy shall then have the force of the original. (1935, c. 265, s. 7; 1951, c. 294.) /

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TITLE 12
DEPARTMENT OF JUSTICE

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SUBCHAPTER 4E - ORGANIZATIONAL RULES AND FUNCTIONS

SECTION .0100 - GENERAL PROVISIONS

.0101 NAME AND LOCATION

(a) The name of this agency shall be the North Carolina State Bureau of Investigation Division of Criminal Information.

(b) The acronym used for this agency shall be DCI.

(c) The Administrative Office of DCI is located at 407 North Blount Street, Raleigh, North Carolina, 27601-1073. The telephone number for the agency is (919) 733-3171.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0102 FUNCTION OF DCI

(a) DCI is responsible for the collection, storage and dissemination of information that will assist criminal justice and law enforcement agencies in the performance of their duties. DCI serves as a central telecommunications center linking local, state and national criminal justice and law enforcement agencies for the purposes of collecting, organizing and retrieving data on crimes and criminals. The central computer network operates 24 hours a day, seven days a week.

(b) The DCI computer provides linkage with the following computer systems:

- (1) National Crime Information Center (NCIC);
- (2) National Law Enforcement Telecommunications System (NLETS); and
- (3) North Carolina Division of Motor Vehicles (DMV).

(c) Subscribers to DCI are provided with the capability to:

- (1) transmit or receive any law enforcement related message to any terminal connected to DCI;
- (2) enter into and retrieve information from DCI's recovered vehicle and state wanted persons files. The means is also provided to inquire into DCI's certified operator, certification enrollment, Uniform Crime Reporting (UCR) and Incident Base (I-Base) files;
- (3) enter into and retrieve information from NCIC's stolen and recovered property, wanted person and missing person files;
- (4) access NCIC's criminal history data referred to as the Interstate Identification Index (III);
- (5) obtain, on a need-to-know basis, the record of an individual by inquiring into the state Computerized Criminal History (CCH) file maintained by DCI, or CCH files maintained by other states and the Federal Bureau of Investigation (FBI) through the NCIC Interstate Identification Index (III);
- (6) communicate with terminals in other states through NLETS with the capability to exchange registration information, criminal history record information, and other law enforcement related information;
- (7) obtain information on North Carolina automobile registration, driver's license information and driver's history by accessing state maintained files; and
- (8) obtain registration information on all North Carolina registered boats, and to inquire about aircraft registration and aircraft tracking.

(d) DCI is responsible for the administration of the Uniform Crime Reporting/Incident Base Program in North Carolina. Under these programs, DCI collects, analyzes and publishes statewide crime statistics for comparison purposes, legislative proposals, budgetary analysis, crime pattern comparison, planning and statistical research purposes.

(e) DCI maintains information on management and evidence tracking services for the North Carolina Department of Justice.

.0103 ADVISORY POLICY BOARD

(a) The DCI Advisory Policy Board shall consist of not less than 13 members selected by the SBI Assistant Director for DCI for recommendation to the Director of the SBI with approval by the North Carolina Attorney General. Members shall serve for a term of two years. Membership shall consist of four police chiefs, four sheriffs, one representative each from the State Highway Patrol, Administrative Office of the Courts, Department of Correction, Division of Motor Vehicles (Enforcement), and the SBI Assistant Director for DCI. The SBI Assistant Director for DCI may serve as Chairman of the Board. The Board shall meet at least twice each year on dates and at locations determined by the SBI Assistant Director for DCI. If any Advisory Policy Board member or his designated representative is absent for two consecutive meetings, that member shall relinquish membership on the Board for the remainder of that term. Notification of such loss of membership shall be made by the SBI Assistant Director for DCI. The SBI Assistant Director for DCI may designate a replacement member to serve for the remainder of that term.

(b) The Board shall advise and make recommendations to the SBI Assistant Director for DCI regarding the philosophy, rule making, organization and operation of DCI. Minutes of each Advisory Policy Board meeting shall be recorded and mailed to each criminal justice agency in North Carolina.

(c) The Advisory Policy Board shall also determine and recommend all penalties applicable to any agency or agency employee with regard to a violation of any of DCI's rules.

(d) The Advisory Policy Board shall hear all appeals by agencies or individuals that have violated DCI's rules upon request of such agencies or individuals. The appeal shall be conducted as an informal hearing.

(e) The Advisory Policy Board shall provide advice to the SBI Assistant Director for DCI when requested pursuant to the provisions of Subchapter 4F Rule .0407 of this Chapter.

(f) The Advisory Policy Board shall hear requests for reinstatement of services suspended pursuant to Subchapter 4G Rule .0101(1)(e) of this Chapter.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0104 DEFINITIONS

The following definitions shall apply throughout Chapter 4 of this Title:

- (1) "Administration of Criminal Justice" means the performance of any of the following activities: detection, apprehension, detention, pretrial release, post-trial release, prosecution, adjudication, and correctional supervision or rehabilitation of accused criminal offenders. The administration of criminal justice shall include criminal identification activities and the collection, storage, and dissemination of criminal history record information.
- (2) "Administrative Message" means messages that may be used by DCI terminal operators to exchange official information of an administrative nature between in-state law enforcement/criminal justice agencies and out-of-state agencies by means of NLETS.
- (3) "Authorized Requestor" means any person who is authorized and approved to receive state or national criminal history data by virtue of being:
 - (a) a member of a law enforcement/criminal justice agency; or
 - (b) any DCI or NCIC authorized non-criminal justice agency pursuant to local ordinance or a state or federal law.
- (4) "Automated Fingerprint Identification System" (AFIS) means a computer based system for reading, encoding, matching, storage and retrieval of fingerprint minutiae and images.
- (5) "CCH" means computerized criminal history.
- (6) "Criminal History Record Information" (CHRI) means information collected by and maintained in the files of criminal justice agencies concerning individuals, consisting of identifiable descriptions, notations of arrest, detentions, indictments or other formal criminal charges. This also includes any disposition, sentencing, correctional supervision, and release information. This term does not include identification information such as fingerprint records to the extent that such information does not indicate formal involvement of the individual in the criminal justice system.
- (7) "Criminal Justice Agency" means the courts, a government agency, or any subunit thereof which performs the administration of criminal justice pursuant to statute or executive order and which allocates over 50 percent of its annual budget to the administration of criminal justice.

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- (8) "Criminal Justice Board" means a board composed of heads of law enforcement/criminal justice agencies which have management control over a communications center.
- (9) "DCI" means Division of Criminal Information.
- (10) "DCI Manual" means a manual containing guidelines for users on the operation of the DCI equipment and providing explanations as to what information may be accessed through the DCI.
- (11) "Direct Access" means an authorized agency has access to the DCI network through a DCI terminal or through a computer interface.
- (12) "Disposition" means information on any action which results in termination or indeterminate suspension of the prosecution of a criminal charge.
- (13) "Driver's History" means information maintained on individual operators to include name, address, date of birth, license issuance and expiration information or control number issuance information, and moving vehicle violation convictions.
- (14) "Dissemination" means any transfer of information, whether orally, in writing, or by electronic means.
- (15) "DMV" means the North Carolina Division of Motor Vehicles.
- (16) "Expunge" means to remove criminal history record information from the DCI and FBI computerized criminal history and identification files pursuant to state statute.
- (17) "Full Access" means the ability of a terminal to access those programs developed and administered by the DCI for local law enforcement and criminal justice agencies specifically including state and national CCH and driver history access.
- (18) "Full-certification" means being operator certified with the ability and knowledge to use the DCI terminal accessing those programs which are developed and administered by DCI for local law enforcement and criminal justice agencies.
- (19) "Hardware" means the physical computer equipment or devices and the peripheral equipment forming the DCI information processing system including the Automated Fingerprint Identification System (AFIS).
- (20) "Hot Files" means DCI/NCIC files which contain information on stolen and recovered property and wanted/missing persons as entered by agencies across the nation.
- (21) "Inappropriate Message" means any message which is incomplete, unnecessary, excessive, abusive, or not in keeping with the rules and regulations of DCI.
- (22) "Incident Base" is a system used to collect criminal offense and arrest information for each criminal offense reported.
- (23) "Indirect Access" means access to DCI through another agency's direct access terminal.
- (24) "In-service Certification" means an operator's certification program provided by local departments and approved by DCI to certify and re-certify their employees.
- (25) "Interstate Identification Index (IIF)" means the FBI's files containing identifying information on persons who have been arrested in the United States for which fingerprints have been submitted to and retained by the FBI.
- (26) "Interface" means a method (either software or hardware) to communicate between two computers or computer systems.
- (27) "IRKS" means an internal records keeping system which DCI makes available to North Carolina criminal justice agencies. Included in IRKS is a jail record keeping system (JRKS).
- (28) "JRKS" means a jail record keeping system that aids agencies in accounting for their jail detainees.
- (29) "Limited Access" means the ability of a terminal to access those programs which are developed and administered by the DCI for local law enforcement and criminal justice agencies specifically excluding state and national CCH.
- (30) "National Fingerprint File (NFF)" means an FBI maintained enhancement to the Interstate Identification Index whereby only a single fingerprint card is submitted per state to the FBI for each offender at the national level. Arrest fingerprint cards from the same state for subsequent arrests as well as final dispositions and expungements will be maintained at the state level.
- (31) "NCIC" means the National Crime Information Center which is maintained in Washington, D.C. by the FBI.
- (32) "Need-to-know" means for purposes of the administration of criminal justice or for purposes of criminal justice agency employment.
- (33) "NLETS" means National Law Enforcement Telecommunications System, which is maintained in

PHOENIX, ARIZONA.

- (34) "Non-criminal Justice Agency" means any agency created by law with the statutory authority to access State Bureau of Investigation criminal history files for purposes of non-criminal justice licensing or employment.
- (35) "Non-criminal Justice Information" means information that does not directly pertain to the necessary operation of a law enforcement/criminal justice agency.
- (36) "Official Record Holder" means the eligible agency that maintains the master documentation and all investigative supplements of the hot file entry.
- (37) "Operator Identifier" means a unique identifier assigned by DCI to all certified operators which is used for gaining access to the DCI network and for the identification of certified operators.
- (38) "Ordinance" means a rule or law promulgated by a governmental authority especially one adopted and enforced by a municipality or other local authority.
- (39) "ORI" means originating routing identifier, which is a unique alpha numeric identifier assigned by NCIC to each authorized criminal justice agency, identifying that agency in all computer transactions.
- (40) "Private Agency" means any agency that has contracted with a government agency to provide services necessary to the administration of criminal justice.
- (41) "Re-certification" means renewal of an operator's initial certification every 24 months.
- (42) "Right-to-know" means for the right of an individual to inspect his or her own record or for other purposes as set forth by statute or court order.
- (43) "Secondary Dissemination" means the transfer of CCH/CHRI information to anyone legally entitled to receive such information who is outside the initial user agency.
- (44) "Servicing Agreement" means an agreement between a terminal agency and a non-terminal agency to provide DCI terminal services.
- (45) "State" means any state of the United States, the District of Columbia, the Commonwealth of Puerto Rico and any territory or possession of the United States.
- (46) "Statute" means a law enacted by a state's legislative branch of government.
- (47) "Switched Message" means messages that may be used by DCI terminal personnel to exchange official information between law enforcement/criminal justice agencies within North Carolina.
- (48) "Terminal" means a video screen with a typewriter keyboard used by DCI to accomplish message switching, DMV inquiries, functional messages, and DCI, NCIC, NLETS on-line file transactions.
- (49) "Terminal Agency" means any agency that has obtained a DCI terminal.
- (50) "UCR" means a Uniform Crime Reporting program to collect a summary of criminal offense and arrest information.
- (51) "Unapproved need-to-know" means any reason for requesting criminal or driver's history data which is not within the scope of authorized purpose codes as defined in the DCI on-line manual.
- (52) "User Agreement" means an agreement between a terminal agency and DCI whereby the agency agrees to meet and fulfill all DCI rules and regulations.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991;
Amended Eff. October 1, 1995; October 1, 1994.*

.0105 FORMS

(a) DCI maintains and supplies a variety of forms for the gathering of statistical information, the orderly housing of records, and participation in the fingerprinting process. Forms maintained and supplied by DCI are as follows:

- (1) Uniform Crime Reporting (UCR), and Incident Base (I-Base). This is a series of forms used to collect local criminal offense and arrest information for statistical analysis and publication;
 - (2) Internal Records Keeping System (IRKS). These forms are specifically designed to provide a basic system of documenting criminal investigation and arrest activity;
 - (3) Jail Records Keeping System (JRKS). This is a system of forms designed to enable agencies to adequately account for jail detainees and their belongings;
 - (4) Fingerprint Cards. These forms are provided to allow agencies to submit fingerprint cards on individuals processed through the criminal justice system to the SBI pursuant to statute.
- (b) These forms with the exception of fingerprint cards, are furnished by DCI to agencies participating in

the UCR and I-Base programs and may be obtained by sending a completed preformatted screen over the DCI terminal or by contacting the Administrative Office of DCI listed in Rule .0101 Paragraph (c) of this Section.

(c) Fingerprint cards and forms may be obtained by sending a completed preformatted screen over the DCI terminal or by mailing a completed order form to the address indicated on the form ordered.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0106 MANUALS

(a) DCI furnishes manuals relating to statistical information and record keeping. These manuals are provided upon request to any criminal justice agency and are also available for inspection at the Administrative Office of DCI listed in Rule .0101 Paragraph (c) of this Section. These manuals are listed as follows:

- (1) **Uniform Crime Reporting.** The UCR Manual (published and provided by the FBI) describes how to accumulate and submit information collected through the Uniform Crime Reporting Program; and
- (2) **Incident Base.** The Incident Base Manual provides descriptions of UCR classification and scoring procedures, descriptions of Incident Base submission requirements, a listing of all codes used in Incident Base reporting, and examples of forms and their completion requirements.

(b) DCI has a terminal operators' manual available for inspection by the public during normal working hours only at DCI's Administrative Offices as listed in Rule .0101 Paragraph (c) of this Section.

(c) DCI also maintains an on-line manual system. Information contained in the on-line manuals can be accessed from each DCI terminal. The information which can be obtained is limited to those functions which have been authorized for that terminal.

SECTION .0200 - REQUIREMENTS FOR ACCESS

.0201 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE DCI NETWORK

(a) Eligibility for a full access DCI terminal or a computer interface with DCI is restricted to agencies which have obtained an NCIC full access ORI and have complied with Rule .0202 of this Section.

(b) Eligibility for a limited access DCI terminal or computer interface with DCI is restricted to agencies which have obtained an NCIC or NLETS assigned limited access ORI and have complied with Rule .0202 of this Section.

(c) Any agency in this state desiring an ORI shall make a written request to the SBI Assistant Director for DCI. Accompanying the written request shall be a copy of the state or local law which establishes such agency and describes the agency's functions and authority. The SBI Assistant Director for DCI shall, on the basis of his findings, obtain an FBI/NCIC ORI or an NLETS assigned ORI. If the request is denied by the FBI and/or NLETS, the Assistant Director for DCI shall provide written findings to the requesting agency outlining the necessary elements to obtain an ORI.

.0202 MANAGEMENT CONTROL REQUIREMENTS

Each direct access DCI terminal, computer interface with the DCI, and those personnel who operate the terminal must be under the direct and immediate management control of a criminal justice agency, criminal justice board or an NCIC/DCI approved non-criminal justice agency. The degree of management control shall be such that the agency head, board or approved agency has the authority to:

- (1) set policies and priorities concerning the use and operation of terminals or computers accessing DCI;
- (2) hire, supervise, suspend or dismiss those personnel who will be connected with the operation or use of the terminal or computers accessing DCI;
- (3) restrict unauthorized personnel from access or use of equipment accessing DCI; and
- (4) assure compliance with all rules and regulations of DCI in the operation of equipment or use of all information received.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991;
Amended Eff. October 1, 1994.*

.0203 NON-TERMINAL ACCESS

(a) A non-terminal criminal justice agency may gain access to the DCI network through a criminal justice agency which has direct access to the network. The servicing agency (agency providing access) shall enter into a Servicing Agreement with the non-terminal agency (agency receiving service) as described in Rule .0303 of this Subchapter.

(b) Any servicing agency which fails to enforce penalties that are placed upon the non-terminal agency will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102 (e) of this Chapter.

(c) A private agency may gain access to the DCI network pursuant to a specific agreement with the terminal agency to provide identified services authorized by the agreement.

(d) The agreement shall:

- (1) authorize access to specific data;
- (2) limit the use of data to purposes for which given;
- (3) insure the security and confidentiality of the data consistent with these procedures and;
- (4) provide sanctions for violation thereof.

(e) Access shall only be granted if the terminal agency agrees.

(f) Any dissemination of criminal history record information by a terminal agency to a private agency without an agreement will constitute a violation of this Rule and will be subject to the provisions of Subchapter 4G Rule .0102 Paragraph (k) of this Chapter.

.0204 SBI TASK FORCE MANAGEMENT CONTROL

(a) When the SBI Director grants approval for the Bureau to participate in and supervise a joint criminal justice agency task force, those authorized staff assigned to the task force shall be temporarily considered under SBI management control for NCIC/DCI access and certification purposes provided the SBI supervisor responsible for the task force insures that:

- (1) Each person assigned to the task force shall be under the direct and immediate management control of any agency qualifying for full access under the provisions of Subchapter 4E Rule .0201(a) of this Chapter;
- (2) Each person shall be properly identified in DCI certification records as to the SBI district responsible for him, and the local agency having management control over him pursuant to Subparagraph (a)(1) of this Rule;
- (3) The responsible SBI supervisor shall treat all task force staff as SBI employees in all matters pertaining to these Rules; and
- (4) The responsible SBI supervisor shall immediately notify DCI in writing of the termination of any task force member upon such member's departure from the task force.

(b) Any in-service certification obtained while a member of a task force shall be terminated upon notification of such member's departure.

SECTION .0300 - STANDARDS AND AGREEMENTS

.0301 USER AGREEMENT

(a) Each eligible agency under Rule .0201 of this Subchapter requesting a DCI terminal shall sign a User Agreement certifying that the agency head has read and understands the requirements for security within DCI, and that the agency head will uphold the agreement and abide by these procedures.

(b) A current copy of the User Agreement may be reviewed at 407 North Blount Street, Raleigh, North Carolina or in the DCI Manual.

(c) Each eligible agency under Rule .0201 of this Subchapter with an interface to DCI's computer shall sign a User Agreement as stated in Paragraph (a) of this Rule. An interface agency shall require all agencies connected through their computer to DCI to sign a User Agreement and notify those agencies of their responsibilities to comply with all DCI regulations. A copy of all such agreements shall be provided to DCI.

(d) DCI shall be notified by the interface agency of any cancellation of services to connected agencies.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0302 USER ACCESS FEE AGREEMENT

(a) The governing bodies of each jurisdiction having a DCI terminal or an interface to DCI shall enter into an agreement with DCI agreeing to assume user costs established by DCI beginning on the day of installation. This fee is to recover a part of the cost of data processing services.

(b) DCI maintains four types of user access fee agreements:

- (1) municipal access fee agreement;
- (2) county access fee agreement;
- (3) state purchase order; and
- (4) federal purchase order.

(c) Failure to pay the user access fee within the prescribed time may result in the termination of services. Termination of service shall be preceded by a late notice allowing sufficient time to make payment.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0303 SERVICING AGREEMENT

(a) Any authorized agency pursuant to Rule .0201 of this Subchapter with direct access to DCI's computer which provides access to a non-terminal agency shall enter into a written Servicing Agreement with the serviced agency. The agreement shall include but not be limited to the following information:

- (1) the necessity for valid and accurate information being submitted for entry into DCI;
- (2) the necessity for documentation to substantiate data entered into DCI;
- (3) the necessity of adopting timely measures for entering, correcting or canceling data in DCI;
- (4) DCI validation requirements;
- (5) the importance of confidentiality of information provided by DCI;
- (6) liabilities;
- (7) the ability to confirm a hit 24 hours a day;
- (8) the necessity of using the ORI of the official record holder in record entries and updates; and
- (9) the necessity of using the ORI of the initial user when making inquiries.

(b) DCI will provide a sample Servicing Agreement to any agency entering into said agreement.

(c) The Servicing Agreement must be signed by the servicing agency and the non-terminal agency, must be notarized, and a copy must be forwarded to DCI.

(d) DCI shall be notified of any cancellations or changes made in servicing agreements.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991;
Amended Eff. October 1, 1994.*

.0304 MANAGEMENT CONTROL AGREEMENT

- (a) A written Management Control Agreement shall be entered into between the law enforcement management control agency or board and the communications center when management control will be under a criminal justice board. The agreement shall state that the Board is composed of law enforcement/criminal justice agency heads and that requirements pursuant to Rule .0202 of this Subchapter are in effect.
- (b) DCI will provide a sample of the Management Control Agreement to requesting agencies.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0305 DISCLOSURE AGREEMENT

- (a) A written Disclosure Agreement shall be entered into between DCI and any individual or agency seeking access to DCI maintained criminal justice information for purposes of research.
- (b) The Disclosure Agreement shall state that each participant and employee of every program of research with authorized access to computerized information is aware of the issues of privacy, the limitations regarding the use of accessed information, and that he agrees to abide by DCI's regulations concerning these issues pursuant to Subchapter 4F Rule .0407 of this Chapter.

SECTION .0400 - OPERATION OF DCI TERMINAL

.0401 DCI TERMINAL OPERATOR

- (a) A DCI terminal operator is a person who has been certified through the DCI certification process as stated in Rule .0402 of this Section.
- (b) An individual is eligible to attend certification class and become a DCI terminal operator only if employed by and under the management control of an agency as described in Rule .0201 of this Subchapter.
- (c) The employing agency shall cause a background investigation to be conducted on all employees assigned as DCI operators. Such investigation shall include a state and national fingerprint search for a criminal record. Any individual who has been convicted of a felony or in the judgment of the agency head or the SBI Assistant Director for DCI, has been convicted of a misdemeanor involving fraud, misrepresentation, or deceit shall not be eligible to become certified as a DCI terminal operator or is subject to revocation of operator certification by DCI.
- (d) Persons with an original certification date prior to January 1, 1992, are exempt from the background investigation and fingerprint search.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0402 CERTIFICATION AND RECERTIFICATION OF DCI OPERATORS

- (a) Authorized agency personnel who are assigned the duty of operating a DCI terminal or who operate a terminal accessing DCI via an approved interface shall be certified within 120 days from employment or assignment to terminal operation duties. Certification is to be awarded based on achieving a test score of 80% or greater. Recertification is required every 24 months and can be obtained any time 90 days prior to expiration. Certification and recertification is available by one of the following methods:
- (1) "General Certification" will be provided by DCI which certifies and recertifies an operator in the broad uses and capabilities available on the DCI network. The initial certification of an operator will be awarded upon attendance and successful completion of the Introduction of DCI Network class. A General Certification student may also take on or more additional modules offered by DCI which teach the specific functions of the Network applicable to their job duties. An operator will only be authorized to perform those functions in which they have been trained and certified. Recertification requires the passing of at least the materials dealing with the "Introduction of DCI Network." Successful recertification can be accomplished by attending General Certification as

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described above or by enrolling on a "testing only" day until expiration of the current certification period. Failure of any module other than Introduction of DCI Network after the current certification period will require the student to attend the respective class and test except as provided in Paragraph (d) of this Rule. An agency head may require an individual to successfully complete all or certain specified modules prior to receiving certification or recertification.

- (2) "Specialized Certification" certifies and re-certifies an operator through a specialized training program provided by employing agency or a host interface agency that provides computer access to DCI. Approval for a "Specialized Certification Program" will be based upon special training needs that are not met by the "General Certification Program" or the cost effectiveness for both the user agency and DCI. Agencies wanting to adopt a specialized program must submit a written proposal to DCI outlining the program to be provided to its personnel. The proposal must be submitted in standard format as required by DCI which includes: types of participants, course contents, implementation methods, instructional methods, and program coordinator duties. DCI personnel will review the proposal and provide a written response of approval or denial. If the proposal is denied, the agency may request an appeal hearing before the Advisory Policy Board. If the proposal is approved, the program coordinator must submit training documentation to DCI for approval to meet DCI/NCIC training standards and policies. The instructor for each approved "Specialized Certification Program" must have successfully completed the North Carolina Law Enforcement Instructor Certification Course and must maintain an active DCI "General Certification" which includes all modules being offered in the "Specialized Certification Program".

Recertification can be obtained by challenging and passing the approved "Specialized Certification Test" or by attending and passing classes as specified in the agencies approved "Specialized Certification Program".

(b) Enrollment will be necessary for student attendance to any training or testing class for DCI operators. Enrollment will be requested and approved by the agency head or where applicable a communications supervisor of an authorized agency as defined in Rules .0201 and .0202 of this Subchapter and personnel must meet the management control requirements outlined in Section .0200 of this Subchapter. DCI will maintain enrollment for all "General Certification" classes and the administering agency will maintain enrollment for each "Special Certification" program. Enrollment shall be done on a form or such automated method provided by DCI. The enrollment procedure for "Special Certification" will be defined within the approved plan and be responsive to the students needs which it serves. The enrollment procedure for General Certification or Recertification are:

- (1) A search of the training or testing class files shall be performed by the enrolling agency to determine whether a class has any vacancies.
- (2) If there is a vacancy, the enrollment will be entered into the class enrollment file in a manner prescribed by DCI.
- (3) The enrolling agency must insure the student has been accepted in class prior to sending them to class.
- (4) When classes become full, DCI is to assist agencies enroll their personnel by establishing waiting lists, identifying alternative classes or if the demand warrants, establish and additional class.
- (5) All Enrollments must be accepted by the deadline as established by DCI at least two work days prior to the training or test class.
- (6) A copy of each enrollment must be signed by the Agency Head, or applicable communication's supervisor, and maintained on file for two years by the enrolling agency. This document is subject to inspection by representatives of the Division at reasonable times.

(c) New personnel hired or personnel newly assigned to duties of a terminal operator shall receive an indoctrination and hands-on training on the basic functions and terminology of the DCI system by their own agency prior to attending certification class. Such personnel may operate a terminal accessing DCI while obtaining indoctrination if such personnel are directly supervised by a certified operator and are within the 120 day training period.

(d) Any individual who's certification has expired may be allowed to retest as a recertification student up to 90 days after their expiration. The individual will not be able to operate the terminal during the time between expiration and passing the recertification test(s). Any individual who's certification has expired more than 90 days will be required to attend and successfully complete training classes.

(e) Any agency which allows an individual to operate a terminal accessing DCI who is not certified or who is not within the 120 day training period and directly supervised by a certified operator will be in violation of this Rule and subject to the provisions of 12 NCAC 4G .0102(b) of this Chapter.

(f) Any agency personnel using a certified operator's identifier other than their own to gain access to DCI and violating any rule in this Chapter for the purpose of concealing their identity will be in violation of this Rule and subject to the provisions of 12 NCAC 4G .0102(c) of this Chapter.

(g) When a DCI certified operator leaves the employment of their agency, the Agency Head will notify DCI within 24 hours. This notification is to allow DCI to immediately remove that operator's identification in the network until such time as they are employed by another authorized agency.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991;
Amended Eff. October 1, 1994; August 1, 1994.*

.0403 SUSPENSION AND REVOCATION OF OPERATOR CERTIFICATION

(a) DCI may suspend or revoke an operator's certification for willfully or repeatedly violating the rules of this Chapter in accordance with Subchapter 4G.

(b) DCI may revoke an operator's certification based upon a request from the operator's agency head. Sufficient evidence showing cause for revocation shall be documented by the employer and submitted to the SBI Assistant Director for DCI.

(c) Upon suspension or revocation of an operator's certification by the Assistant Director of DCI, written notice of the revocation or suspension shall be sent by certified mail, return receipt requested to the operator and to his agency head. The notice shall inform the parties of their appeal rights as provided in Paragraph (d) of this Rule and shall also contain the bases for the revocation or suspension.

(d) An operator whose certification has been revoked or suspended may request an informal hearing before the Advisory Policy Board or may appeal directly to OAH by filing a petition for a contested case. A request for an informal hearing must be in writing and submitted to the SBI Assistant Director for DCI within 15 days from the date of notification of revocation or suspension. A petition for a contested case must be filed with OAH within 60 days in accordance with G.S. 150B-23(f). An operator requesting an informal hearing may have his certification reinstated until the results of the informal hearing are known. DCI shall notify the operator and his agency head of the results of the informal hearing within two weeks following the hearing and inform the parties of their rights of appeal under G.S. 150B-23.

(e) Any operator who has his certification revoked and not reinstated by the Advisory Policy Board, or by the Office of Administrative Hearings shall not be eligible to obtain DCI certification for a period of one year from revocation. The individual must meet the requirements of Rule .0402 of this Section prior to obtaining certification.

(f) DCI maintained operator records, compiled as a result of audits including probationary, suspension, or revocation status, will be made available to employing law enforcement/criminal justice agencies upon request.

*History Note: Statutory Authority G.S. 114-10; 114-10.1; 150B-3(b); 150B-23(f);
Eff. November 1, 1991.*

SUBCHAPTER 4F - SECURITY AND PRIVACY

SECTION .0100 - SECURITY AT LOCAL SITES

.0101 SECURITY OF DCI EQUIPMENT

(a) Agency heads who have management control of the DCI terminal shall institute controls for maintaining the sensitivity and confidentiality of all information provided by or through DCI. These controls will include, but are not limited to, the following:

- (1) the DCI terminal and printer shall be located in a secure area accessible only to authorized personnel;
- (2) the DCI terminal operator's manual and changes thereto shall be located in a secure area accessible only by authorized personnel; and
- (3) the DCI terminal equipment must be safeguarded from damage by excessive dirt, employee misuse, fire, floods and power failure.

If any damage occurs, it will be reported to the DCI computer center by telephone, or by switch message to the DCI central site. Users will be liable for payment for repairs resulting from negligence, abuse or misuse.

(b) Failure to maintain a secure site will be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(a) of this Chapter.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0102 OFFICIAL USE OF DCI INFORMATION

(a) The DCI Communications Network is for appropriate criminal justice and law enforcement purposes only. All traffic generated over the system shall be made in the performance of the employee's or agency's official duties as they relate to the administration of criminal justice.

(b) An inappropriate message is one which contains information that is unnecessary, excessive or abusive in nature. Some examples of inappropriate messages are requests for checks on wanted persons when such information can be found in the wanted person file, messages which give inadequate descriptions thereby preventing appropriate action from being taken, messages which provide lengthy lists of property stolen which should be entered into the DCI/NCIC hot files, or any messages which recruit personnel.

(c) Non-criminal justice information is any message of a personal nature or a subject matter totally unrelated to the administration of criminal justice.

(d) The transmission of non-criminal justice information over the DCI network is a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(d) of this Chapter.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

SECTION .0200 - DCI/NCIC HOT FILES

.0201 DOCUMENTATION AND ACCURACY

(a) Law enforcement and criminal justice agencies have the capability to enter stolen/recovered property and wanted/missing persons into the DCI/NCIC hot files. Any record entered into the hot files must be documented. The documentation required is:

- (1) a theft report of items of stolen property;
- (2) an active warrant for the entry of wanted persons;
- (3) a missing person report and, if a juvenile, a written statement from a parent, spouse, family member, or legal guardian verifying the date of birth and confirming that a person is missing; or
- (4) a medical examiner's report for an unidentified dead person entry.

(b) All DCI/NCIC hot file entries must be complete and accurately reflect the information contained in the agency's investigative documentation at the point of initial entry or modification. This process must be checked by a second party who will initial and date a copy of the record indicating accuracy has been determined.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991;
Amended Eff. October 1, 1994.*

.0202 VALIDATIONS

(a) DCI/NCIC requires that law enforcement and criminal justice agencies validate all record entries, with the exception of articles, made into the hot files. This process ensures that each hot file record is complete, accurate and up-to-date.

(b) Validation is accomplished by reviewing the original entry and current supporting documents. In addition to this review, the stolen vehicle, stolen boat, wanted person and missing person files require consultation with any appropriate complainant, victim, prosecutor, court, motor vehicle registry files or other appropriate source or individual pursuant to the procedure in the DCI on-line manual.

(c) Any records containing inaccurate data shall be modified and records which are no longer current or, cannot be substantiated by a source document, shall be removed from the hot files.

(d) Any agency which does not properly validate its records and notify DCI of the completion of its validation, pursuant to the procedure in the DCI on-line manual, will have their records cancelled for that month. The agency head will be notified by mail of the cancellation. An agency may re-enter the cancelled records once the records have been validated.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0203 HIT CONFIRMATION

(a) Any agency entering record information into the DCI/NCIC hot files, or which has a servicing agency enter record information for its agency, is required to provide hit confirmation 24 hours a day. Hit confirmation of DCI/NCIC records means that an agency receiving a positive DCI/NCIC response from an inquiry must communicate with the official record holder to confirm the following before taking a person or property into custody:

- (1) take reasonable steps to ensure that the person or property inquired upon is the same as the person or property identified in the record;
- (2) take reasonable steps to ensure that the warrant, missing person report, or theft report is still outstanding; and
- (3) obtain a decision regarding the extradition of a wanted person, information regarding the return of the missing person to the appropriate authorities, or information regarding the return of stolen property to its rightful owner.

(b) The official record holder must respond within ten minutes of receiving a hit confirmation request with the desired information or a notice of the specific amount of time necessary to confirm or reject the record.

(c) DCI may cancel an agency's record from the DCI/NCIC hot files for failure to respond to a hit confirmation request within ten minutes.

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SECTION .0300 - SUBMISSION OF DATA FOR CRIMINAL HISTORY RECORDS

.0301 ARREST FINGERPRINT CARD

(a) Agencies must submit an SBI and an FBI fingerprint card on every individual charged with the commission of a felony. The fingerprint cards must contain the following information on the arrestee in order to be processed by the SBI and FBI:

- (1) ORI number and address of arresting agency;
- (2) complete name;
- (3) date of birth;
- (4) race;
- (5) sex;
- (6) date of arrest;
- (7) criminal charges; and
- (8) a set of rolled-inked fingerprint impressions, including palm prints on the SBI fingerprint card.

Any fingerprint cards received by DCI which do not meet these requirements will be returned to the submitting agency to be corrected and resubmitted.

(b) The arrest information contained on the arrest fingerprint card is added to the NC CCH files. After processing through the SBI files, the FBI criminal fingerprint card is forwarded to the FBI for processing.

(c) Criminal fingerprint cards may be submitted in the following ways:

- (1) first class mail addressed to:
North Carolina State Bureau of Investigation
Division of Criminal Information
407 North Blount Street
Raleigh, North Carolina 27601-1073
Attention: Identification Section;
- (2) deliver in person:
North Carolina State Bureau of Investigation
Identification Section
Building 16A
3320 Old Garner Road
Raleigh, North Carolina 27626-0500; and
- (3) inter agency state courier service mail pickup located at each county seat addressed to the address in Subparagraph (c)(1) of this Rule.

*History Note: Statutory Authority G.S. 15A-502; 15A-1383;
Eff. November 1, 1991.*

.0302 FINAL DISPOSITION INFORMATION

(a) Final disposition information shall be submitted to the SBI by the Clerk of Court, or the Administrative Office of the Courts. The agency which submitted the arrest fingerprint card must include the following information on the final disposition report before it can be processed by the Clerk of Court:

- (1) ORI number and address of arresting agency;
- (2) complete name;
- (3) date of birth;
- (4) race;
- (5) sex;
- (6) date of arrest;
- (7) all offenses charged against the defendant;
- (8) officer's name;
- (9) officer's title; and
- (10) date form filled out.

Any final disposition information received by DCI which does not meet these requirements will be returned to the appropriate agency to be corrected and resubmitted.

- (b) The final disposition information is added to the CCH files.
- (c) Final disposition information may be submitted pursuant to the procedure listed in Rule .0301 Paragraph (c) of this Section.

*History Note: Statutory Authority G.S. 15A-1381; 15A-1382; 15A-1383; 114-10; 114-10.1;
Eff. November 1, 1991.*

.0303 PRISON FINGERPRINT CARD

(a) Incarceration information shall be submitted to the SBI by the NC Department of Correction (DOC) on all subjects admitted to prison. Two fingerprint cards must be submitted and contain the following information in order to be processed by the SBI and FBI:

- (1) ORI number;
- (2) complete name;
- (3) date of birth;
- (4) race;
- (5) sex;
- (6) date of admission;
- (7) charges convicted of;
- (8) DOC number;
- (9) sentence information; and
- (10) a set of rolled-inked fingerprint impressions, including palm prints on the SBI fingerprint cards.

Any incarceration information received by DCI which does not meet these requirements will be returned to DOC to be corrected and resubmitted.

(b) The incarceration information contained on the prison fingerprint card is added to the NC CCH files. After processing through the SBI files, the FBI criminal card is forwarded to the FBI for processing.

(c) Incarceration information may be submitted pursuant to the procedure listed in Rule .0301 Paragraph (c) of this Section.

*History Note: Statutory Authority G.S. 15A-502; 15A-1383; 114-10; 114-10.1;
Eff. November 1, 1991.*

SECTION .0400 - COMPUTERIZED CRIMINAL HISTORY ACCESS AND USE REQUIREMENTS

.0401 DISSEMINATION OF CCH RECORDS

(a) Except as provided by Rules .0402, .0404, .0406, of this Section criminal history record information obtained from or through DCI, NCIC, or NLETS shall not be disseminated to anyone outside of those agencies eligible under Subchapter 4E Rule .0201(a) of this Chapter. Any agency assigned a limited access ORI shall not obtain criminal history record information. Any agency requesting criminal history record information which has not received an ORI pursuant to Subchapter 4E Rule .0201(a) of this Chapter should be denied access and referred to the SBI Assistant Director for DCI.

(b) Criminal history record information is available to eligible agency personnel only on a "need-to-know" or "right-to-know" basis as defined in Subchapter 4E Rule .0104 of this Chapter.

(c) The use or dissemination of computerized criminal history for unauthorized purposes will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(k) and (l) of this Chapter.

(d) DCI shall maintain an automated log of CCH/CHRI inquiries for a period of not less than 1 year from the date of inquiry. The automated log will contain the following information as supplied by the operator on the inquiry screen and will be made available on-line to the inquiring agency:

- (1) date of inquiry;
- (2) name of record subject;
- (3) state identification number (SID) or FBI number of the record subject;
- (4) message key used to obtain information;
- (5) purpose code;
- (6) operators initials;
- (7) (Attention field) name of person and agency requesting information who is the initial user of the record, and if applicable;
- (8) (Attention 2 field) name of person and agency requesting information who is outside of the initial user agency.

(e) Criminal justice agencies making secondary disseminations of CCH/CHRI obtained through DCI shall maintain a log of the dissemination in a case file or other appropriate medium. This log must identify the name of the recipient and their agency.

(f) It shall be the duty of each criminal justice agency obtaining criminal history record information through DCI to conduct a monthly audit of their automated CCH log as provided by DCI.

- (1) This audit should include but is not limited to a review for unauthorized inquiries and disseminations, improper use of agency ORI's, agency names, and purpose codes.
- (2) Printouts of the DCI automated CCH log must be signed or initialed by a designated representative and dated indicating a monthly review has occurred. These logs must be maintained on file for 1 year from the date of the inquiry.
- (3) Any misuse or possible violations of DCI policy must be reported to DCI.

(g) Printouts of DCI automated CCH logs and any secondary dissemination logs shall be available for audit or inspection by the SBI Assistant Director for DCI or his designate at such time as they may require as provided in 12 NCAC 4F .0801 of this Subchapter.

(h) Agencies that fail to comply with the provisions of 12 NCAC 4F .0401(d) will be in violation and subject to the sanctions of 12 NCAC 4G .0102(n). Agencies that fail to comply with the provisions of Subchapter 4F .0401 (e) and/or (f) will be in violation and subject to the sanctions of 12 NCAC 4G .0102(m).

(i) Direct or indirect access agencies responding to an out of state request for criminal history record information through NLETS shall only respond with criminal history record information received within their jurisdiction and maintained in their files. Out of state agencies requesting a state wide criminal record check should be directed to use the state automated file.

.0402 ACCESSING OF CCH RECORDS

(a) Any accessing of or inquiry into the CCH records must be made with the proper message key only and must be for the intended transaction or purpose for which the message key is designed.

(b) Any accessing of or inquiry into the III using an improper message key resulting in a record being routed to a terminal and displayed on the screen shall be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(i) of this Chapter.

(c) Any dissemination by a certified operator for an unauthorized purpose or to an unauthorized requestor shall be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(K) of this Chapter.

.0403 USE OF CCH FOR CRIMINAL JUSTICE EMPLOYMENT

- (a) DCI processes criminal justice applicant fingerprint cards required pursuant to statute.
- (b) Agencies must submit two applicant fingerprint cards on each individual containing the following information in order to be processed by the SBI and FBI:
 - (1) complete name;
 - (2) date of birth;
 - (3) race;
 - (4) sex;
 - (5) position applied for;
 - (6) hiring agency; and
 - (7) a set of rolled-inked fingerprint impressions.

Any fingerprint cards received by DCI which do not meet these requirements will be returned to the submitting agency to be corrected and resubmitted.

- (c) All criminal justice applicant fingerprint cards and the resulting record response are returned to the appropriate agencies and are not maintained by DCI.

*History Note: Statutory Authority G.S. 114-10; 114-10.1; 114-16; 114-19;
Eff. November 1, 1991.*

.0404 INDIVIDUAL'S RIGHT TO REVIEW

- (a) An individual may obtain a copy of his or her own criminal history record by submitting a written request to the North Carolina State Bureau of Investigation, Division of Criminal Information, Identification Section, 407 North Blount Street, Raleigh, North Carolina 27601-1073. The written request must be accompanied by a certified check or money order in the amount of fourteen dollars (\$14.00) payable to the North Carolina Department of Justice, and must contain proof of identity to include:

- (1) complete name and address;
- (2) race;
- (3) sex;
- (4) date of birth;
- (5) social security number; and
- (6) a set of rolled-inked fingerprint impressions.

This procedure guarantees positive identification and insures that the individual receives a copy of his or her own record as currently maintained in the SBI Identification file including CCH and AFIS.

- (b) The accuracy and completeness of an individual's record may be challenged by submitting the written exceptions form available from the DCI.

(c) Upon receipt of the written exceptions form, the Identification Section Supervisor shall initiate an internal record audit of the challenger's record to determine its accuracy. If any inaccuracies or omissions are discovered, the Identification Section will make appropriate additions, deletions or alterations to the record. Notice of any changes made will be given to the challenger, and to any agency to which the inaccurate or incomplete information has been disseminated. The challenger shall be informed in writing of the results of the audit.

- (d) If the audit fails to disclose any inaccuracies, or if the challenger wishes to contest the results of the audit, he is entitled to an administrative hearing pursuant to G.S. 150B-23.

.0405 CCH LICENSING AND NON-CRIMINAL JUSTICE EMPLOYMENT PURPOSES

(a) Criminal justice agencies authorized under Subchapter 4E Rule .0201 of this Chapter which issue licenses or approve non-criminal justice employment and want to use computerized criminal history information maintained by DCI for licensing, permit, and non-criminal justice employment purposes shall submit to the SBI Assistant Director for DCI a written request listing the types of licenses, permits, and employment for which they desire to use computerized criminal history information. A copy of the local ordinance(s) and/or a reference to the North Carolina General Statute(s) giving authority to issue a particular permit or license must be included in the written request.

- (1) Authorization to use computerized criminal history information for licensing, permit, or employment purposes may be given only after the SBI Assistant Director for DCI and the North Carolina Attorney General's Office have evaluated and granted authorization based upon the authority of the North Carolina General Statutes and/or local ordinance pertaining to the issuance of that particular license or permit for employment;
- (2) Upon authorization, a written notice will be submitted to the requesting agency authorizing that agency to use computerized criminal history information maintained by DCI for specified licensing permit or employment purposes;
- (3) After notice of authorization has been given, the agency's terminal, if applicable, will receive the capability to use the purpose code "E" in the purpose field of the computerized criminal history inquiries for employment/licensing. Once an agency has received this capability, it shall be required to use the purpose code "E", the proper two character code, and an abbreviation of the ultimate recipient of the records name. A log of all primary and any secondary dissemination must also be kept for one year on all positive responses received from this type of inquiry.

(b) Criminal justice agencies may also gain access by submission of non-criminal justice applicant fingerprint cards. Approval must be obtained pursuant to the procedure in Paragraph (a) of this Rule and a Fee for Service Agreement must be signed prior to the release of criminal history information. Two applicant fingerprint cards must be submitted on each individual accompanied by a check or money order in the amount of fourteen dollars (\$14.00) if the agency has not signed the DCI Billing Agreement. The fingerprint cards must contain the following information on the applicant in order to be processed by the SBI and FBI: complete name, date of birth, race, sex, reason fingerprinted to include the N.C.G.S., position applied for, the licensing/employing agency, and a set of rolled-inked fingerprint impressions. The fingerprint cards shall be returned to the agency denoting a prior record or with a no record response.

(c) Requests from non-criminal justice agencies or individuals to use criminal history information maintained by DCI for licensing and employment purposes shall be treated as a fee for service request pursuant to G.S. 114-19.1 or any other applicable statute. All such requests shall be submitted in writing on forms approved by the Attorney General to the SBI Assistant Director for DCI who shall recommend approval or disapproval as appropriate. The Assistant Director may consult with the Advisory Policy Board if he deems it necessary prior to making a final recommendation to the Department of Justice.

- (1) Upon being approved, the requesting agency shall submit its requests to the Division of Criminal Information, attention: Identification Section, 407 North Blount Street, Raleigh, North Carolina 27601-1073. Each request shall include sufficient documentation to establish and verify identity such as complete name, race, sex, date of birth, and social security number. Each request shall include a reasonable fee of fourteen dollars (\$14.00) established for such requests in the form of a certified cashier's check or money order; and
- (2) Criminal history information accessible by authorization of this Section shall be North Carolina criminal history information only.

.0406 RESTRICTIVE USE OF CCH FOR EMPLOYMENT PURPOSES

(a) Use of computerized criminal history information maintained by the DCI for licensing permits or

non-criminal justice employment purposes shall only be authorized for those criminal justice and non-criminal justice agencies who have complied with Rule .0405 of this Section.

(b) The following requirements and restrictions shall be applicable to all agencies who have received approval to use computerized criminal history information for licensing, permits, or non-criminal justice employment purposes. Each such agency shall be responsible for their full and prompt implementation:

- (1) in no case shall computerized criminal history information obtained be used or disseminated for any other purpose;
- (2) in no case shall computerized criminal history information obtained be released to or reviewed by anyone other than the agencies authorized by the SBI Assistant Director for DCI;
- (3) the only data in the computerized criminal history files which can be used in an agency's determination of issuing or denying a license, permit or employment are those crimes stipulated in the referenced ordinance or statutory authority as grounds for disqualification. All criminal history arrest information held by DCI will be released regardless of disposition status. Each agency shall be responsible for reviewing each statutory authority and knowing what data can and cannot be used for grounds in denying or issuing a particular license or permit for employment;
- (4) Prior to denial of a license, permit, or employment due to data contained in a computerized criminal history record, a fingerprint card of the applicant shall be submitted to the SBI, DCI Identification Section for verification that the record belongs to the applicant;
- (5) If the information in the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of the information contained in the record. The applicant must be afforded a reasonable time to correct, complete or to decline to correct or complete the information. An applicant should not be presumed to be guilty of any charge/arrest for which there is no final disposition stated on the record or otherwise determined. Applicants wishing to correct, complete or otherwise challenge a record must avail themselves of the procedure set forth in Rule .0404 Paragraph (c) of this Section. Improper use of CCH data in denial or revocation of a license or permit is a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(j) of this Chapter.

(c) A "no-hit" on a computerized criminal history inquiry does not necessarily mean that the individual does not have a record. If the requesting agency desires a more complete check on an applicant, a fingerprint card of the applicant should be submitted to DCI.

*History Note: Statutory Authority: G.S. 114-10; 114-10.1; 114-19.1;
Eff. November 1, 1991.*

.0407 RESEARCH USE AND ACCESS OF CCH RECORDS

(a) Researchers who wish to use criminal justice information maintained by DCI shall first submit to the SBI Assistant Director for DCI a completed research design that guarantees adequate protection of security and privacy. Authorization to use computerized criminal history records may be given after the SBI Assistant Director for DCI has approved the research design.

(b) Prior to making a decision whether or not to authorize a particular researcher access to CCH, the SBI Assistant Director for DCI may consult with the DCI Advisory Policy Board.

(c) In making a determination, the Assistant Director and the Advisory Policy Board must insure that an individual's right to privacy will not be violated by the research program, that the program is calculated to prevent injury or embarrassment to any individual, that the results outweigh any disadvantages that are created for the North Carolina criminal justice system if the research information is provided, that the criminal justice community benefit from the research and use, and that the requestor be responsible for cost.

(d) For purposes of this Section, a researcher shall be defined as a non-criminal justice/private agency or a criminal justice agency wishing to access criminal history data for a statistical purpose.

.0408 LIMITATION REQUIREMENTS

Research designs must preserve the anonymity of all subjects. The following requirements shall be

applicable to all such programs of research and each criminal justice agency and/or researcher shall be responsible for their full and prompt implementation:

- (1) In no case shall computerized criminal history records furnished for purposes of any program of research be used to the detriment of the person(s) to whom such information relates.
- (2) In no case may computerized criminal history records furnished for purposes of any program of research be used for any other purpose; nor may such information be used for any program of research other than that authorized by the SBI Assistant Director for DCI.
- (3) Each researcher or anyone having access to the computerized criminal history shall, prior to having such access, sign a Disclosure Agreement with the SBI Assistant Director for DCI incorporating the requirements of Subchapter 4E Rule .0305 of this Chapter.
- (4) In every case the authorization for access to computerized criminal history records shall assure that the criminal justice agency and the SBI Assistant Director for DCI has full and complete rights to monitor the program of research to assure compliance with this Regulation. Such monitoring rights shall include the right of DCI staff and the DCI Advisory Policy Board to audit and review such monitoring activities and also to pursue their own monitoring activities.
- (5) Each program of research shall preserve the right of DCI and the criminal justice agency involved to examine and verify the data generated as a result of the program, and, if a material error or omission is found to have occurred, to order that the data not be released for any purpose unless corrected to the satisfaction of the agency and DCI.

SECTION .0500 - REMOVAL OF CRIMINAL HISTORY RECORD INFORMATION

.0501 EXPUNGEMENTS

(a) Criminal history record information may be expunged from NC CCH files when the petitioner follows the guidelines outlined in the NC General Statutes.

(b) Upon the receipt of a valid court ordered expungement, the Identification Section of DCI will expunge the appropriate CHRJ as directed by the court order. The court order will be forwarded to the FBI for processing and all agencies which have inquired on the record within the past 90 days will be advised of the court order.

(c) The person seeking the expungement shall pay a fee of fourteen dollars (\$14.00).

*History Note: Statutory Authority G.S. 15A-145; 15A-146; 90-96; 90-113.14; 114.10; 114-10.1; 150B-19(5)b., e.;
Eff. November 1, 1991.*

.0502 PURGES

(a) DCI will purge criminal history record information on deceased subjects upon the receipt of two sets of post mortem fingerprints. Deceased records are retained at DCI for one year and then are transferred to the State Records Center and retained there for five years.

(b) DCI will also purge criminal history record information when an individual attains the age of 80 years. Once purged, these records are retained for one year and then transferred to the State Records Center and retained there for five years.

SECTION .0600 - AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

.0601 AUTOMATED FINGERPRINT IDENTIFICATION SYSTEM

- (a) Agencies which meet the requirements of 12 NCAC 4E .0201(a) may access the SBI's Automated Fingerprint Identification System for criminal justice purposes.
- (b) Direct access may be obtained by submitting a letter of request to the SBI Assistant Director for DCI.
- (c) The acronym used for the SBI's Automated Fingerprint Identification System shall be the AFIS.

*History Note: Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16;
Eff. November 1, 1991;
Amended Eff. October 1, 1992.*

.0602 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE AFIS NETWORK

Any request for an AFIS terminal and access must be approved by the SBI/DCI Advisory Policy Board.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. October 1, 1992.*

.0603 AFIS AGREEMENT

- (a) Each eligible agency under Rule .0602 of this Section requesting an AFIS terminal shall sign an AFIS Agreement certifying that the agency head has read, and understands the requirements for security within DCI, and that the agency head will uphold the agreement, and abide by the standards and guidelines outlined in the AFIS Agreement.
- (b) A current and signed copy of the AFIS Agreement for each agency may be reviewed at 407 North Blount Street, Raleigh, North Carolina.
- (c) Upon determination that a violation of the AFIS Agreement has occurred, requirements outlined in 12 NCAC 4G .0201 must be followed.

*History Note: Statutory Authority G.S. 15A-502; 114-10; 114-10.1; 114-16;
Eff. October 1, 1992.*

.0604 AVAILABLE DATA

- (a) The following data is available and may be used to make comparisons and obtain CCH data:
 - (1) fingerprint classification;
 - (2) fingerprint minutiae;
 - (3) fingerprint images; and
 - (4) state identification number.
- (b) When the state identification number is used to obtain CCH data, dissemination requirements outlined in 12 NCAC 4F .0401(c) and (d) must be followed.

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SECTION .0700 - DRIVER HISTORY

.0701 DISSEMINATION OF DRIVER HISTORY INFORMATION

(a) Driver history information obtained from or through DCI shall not be disseminated to anyone outside those agencies eligible under Subchapter 4E Rule .0201(a) of this Chapter unless obtained for the following purposes:

- (1) in the decision of issuing permits or licenses if statutory authority stipulates the non-issuance or denial of a permit or license to an individual who is a habitual violator of traffic laws or who has committed certain traffic offenses and those licensing purposes have been authorized by DCI and the Attorney General's Office;
- (2) by governmental agencies to evaluate perspective or current employees for positions involving the operation of public owned vehicles; or
- (3) by a defendant's attorney of record in accordance with G.S. 15A-141.

(b) The dissemination of driver history information to an unauthorized requestor by a certified operator will be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(f) of this Chapter.

(c) Each direct access agency disseminating driver history information to a non-criminal justice agency for any of the purposes listed in Paragraph (a) of this Rule shall maintain a log of dissemination for one year containing the following information:

- (1) date of inquiry for obtaining driver's history;
- (2) name of terminal operator;
- (3) name of record subject;
- (4) driver's license number;
- (5) name of individual and agency requesting or receiving information; and
- (6) purpose of inquiry.

(d) Driver history records obtained for any purpose listed in Paragraph (a) of this Rule shall be used for only that official internal purpose and shall not be redisseminated or released for any other purpose.

(e) Driver history information obtained from or through DCI shall not be released to the individual of the record. If an individual wishes to review or challenge his own driving record, he should contact the Division of Motor Vehicles in Raleigh, North Carolina.

(f) Any unauthorized use of driver's history by authorized agency personnel other than a certified operator is a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(g) of this Chapter.

(g) Agencies failing to maintain (failure is defined as more than 10 percent deficient) a log of dissemination on driver's histories obtained through DCI for the purposes and time limits outlined herein shall be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(h) of this Chapter.

SECTION .0800 - AUDITS

.0801 AUDITS

(a) DCI must biennially audit criminal justice information entered, modified, cancelled, cleared and disseminated by DCI terminal users. Agencies subject to audit include all agencies which have direct or indirect access to information obtained through DCI.

(b) DCI shall send designated representative(s) to selected law enforcement and criminal justice agency sites to audit:

- (1) criminal history dissemination logs;
- (2) driver history dissemination logs;
- (3) security safeguards and procedures adopted for the filing, dissemination, or destruction of criminal history records;
- (4) secure location and access of DCI terminals;
- (5) documentation establishing the accuracy and validity of records entered into DCI/NCIC wanted, missing person, and property files; and
- (6) fingerprint submissions of arrestees.

(c) The audits will be conducted to ensure that the agencies are complying with DCI's regulations, as well as federal and state statutes on security and privacy of criminal history record information.

(d) DCI may, at its discretion, conduct audits of Incident Base agencies to insure compliance with applicable rules, regulations, and acceptable reporting standards.

SUBCHAPTER 4G - PENALTIES AND ADMINISTRATIVE HEARINGS

SECTION .0100 - DEFINITIONS AND PENALTY PROVISIONS

.0101 DEFINITIONS

The following definitions shall apply throughout Chapter 4 of this Title:

(1) **Agency Penalties:**

- (a) **"Warning"** means a letter of warning mailed to the agency head setting forth the administrative procedure that has been violated. It will also state what penalty will be imposed if the agency is found in violation again within one year from the date of the audit report.
- (b) **"Reprimand"** means a letter of reprimand will be mailed to the agency head setting forth the administrative procedure that has been violated and the number of times this administrative procedure has been violated. It will also state what penalty will be imposed if the agency is found in violation again within one year from the date of the audit report. A copy of this reprimand letter shall be forwarded to the head of the governmental body that the agency serves, i.e., city manager, county manager.
- (c) **"Limited Operational Time"** means the amount of operational time will be proportionate to the number of certified operators.
- (d) **"Probation"** means an agency will be placed in a probationary status for a period of one year from the date of the audit report. The agency will be subject to a re-audit after 90 days from the date of the report. A re-audit does not clear the probationary status.
- (e) **"Suspended Services"** means an agency's direct access to the SBI/DCI computer system will be suspended after the Advisory Policy Board's finding of fault and the agency head must then appear before the Advisory Policy Board to respond to the cited violation. This suspension may be limited to certain files or may include a complete suspension of access, depending on the administrative procedure violated. The agency will be subject to a re-audit after 90 days of reinstatement of limited or full access. Further violations of the same regulation, within one year from the date of the suspension, or failure to appear before the Advisory Policy Board to respond to the cited violation will be grounds to cancel the User Agreement with the agency.

(2) **Individual Penalties:**

- (a) **"Warning"** means a letter of warning will be mailed to the certified operator with a copy of each warning letter to the agency head. This warning letter shall set forth the administrative procedure that has been violated and it will also state what penalty will be imposed if the operator is found in violation again within one year from the date of the audit report.
- (b) **"Probation"** means an operator's certification will be placed in a probationary status for a period of one year from the date of the audit report. The agency will be subject to a re-audit after 90 days from the date of the audit report. A copy of the probationary letter will be mailed to the operator's agency head and to the operator.
- (c) **"Suspend Certification"** means the operator will not be permitted to operate the DCI terminal for a period of 90 days. A copy of the suspension letter will be mailed to the operator's agency head and to the operator. The agency will be subject to a re-audit after 90 days of reinstatement of an operator's certification.
- (d) **"Revoke"** means the operator's certification will be revoked for one year or as otherwise provided in the rules.

*History Note: Statutory Authority G.S. 114-10; 114-10.1;
Eff. November 1, 1991.*

.0102 PENALTY PROVISIONS

- (a) Insecure location of DCI terminal pursuant to 12 NCAC 4F .0101 shall result in the following penalties:
 - (1) **First Offense - Agency Penalty (Warning)** with conditions that the terminal be secured within 48 hours:

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- (2) **Second Offense - Agency Penalty (Reprimand)** with conditions that the SBI Assistant Director for DCI and the agency head must establish an agreed time period within which the terminal can be secured and;
- (3) **Third Offense - Agency Penalty (Suspension)** resulting in suspended access to computerized criminal history and drivers history data until the terminal is secured.
- (b) **Uncertified (at any level) operator pursuant to 12 NCAC 4E .0402 shall result in the following penalties:**
 - (1) **First Offense - Agency Penalty (Reprimand);**
 - (2) **Second Offense - Agency Penalty (Probation) and limited operational time;**
 - (3) **Third Offense - Agency Penalty (Suspend Services) with full service removed for six months from the date of the hearing and probation extended for one year from date of reinstatement and;**
 - (4) **Fourth Offense - Agency Penalty (Suspend Services) resulting in the removal of the terminal.**
- (c) **Unauthorized use of a DCI certified operator identifier pursuant to 12 NCAC 4E .0402 shall result in the following penalty. If the certified operator accesses a level of DCI for which they are not certified but it is for an authorized criminal justice purpose the penalty is:**
 - (1) **First Offense - Individual Penalty (Warning);**
 - (2) **Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning) if on the same operator;**
 - (3) **Third Offense - Individual Penalty (Suspended Certification) and Agency Penalty (Reprimand) if on the same operator as a second offense; and**
 - (4) **Fourth Offense - Individual Penalty (Revocation) and Agency Penalty (Probation) if on the same operator as a third offense.**

If the certified operator accesses a level of DCI for which they are not certified but for unauthorized criminal justices purposes the penalty shall be an Individual Penalty (Revocation) and/or the seeking of criminal prosecution under any applicable state or federal law for unauthorized access to a computer system.
- (d) **Transmission of non-criminal justice related information over a DCI terminal pursuant to 12 NCAC 4F .0102 shall result in the following penalties:**
 - (1) **First Offense - Individual Penalty (Warning);**
 - (2) **Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning) if on same operator;**
 - (3) **Third Offense - Individual Penalty (Suspended Certification) and Agency Penalty (Reprimand) if on the same operator as a second offense and;**
 - (4) **Fourth Offense - Individual Penalty (Revocation) and Agency Penalty (Probation) if on the same operator as a third offense.**
- (e) **Failure by the original servicing agency (agency with direct access) to comply with the penalties that are placed upon the non-terminal (indirect access) agency pursuant to 12 NCAC 4E .0203 shall result in the following penalty:**

First and Subsequent Offenses - The servicing agency (agency providing direct access) will receive the same penalty that should have been imposed upon the non-terminal (indirect access) agency.
- (f) **Dissemination of driver's history by a certified operator to an unauthorized requestor pursuant to 12 NCAC 4F .0701 shall result in the following penalties:**
 - (1) **First Offense - Individual Penalty (Probation);**
 - (2) **Second Offense - Individual Penalty (Suspension) and Agency Penalty (Warning) and;**
 - (3) **Third Offense - Individual Penalty (Revocation).**
- (g) **Unauthorized use of driver's history by authorized personnel other than a certified operator pursuant to 12 NCAC 4F .0701 shall result in the following penalties:**
 - (1) **First Offense - Agency Penalty (Warning) with the agency submitting a written response to the SBI/DCI of a plan and date by which departmental training is complete to prevent further violations of this Rule;**
 - (2) **Second Offense - Agency Penalty (Reprimand) and;**
 - (3) **Third Offense - Agency Penalty (Suspension) of driver's history for six months.**
- (h) **Failure (if entire agency is more than 10 percent deficient) to maintain a log of dissemination on "positive" driver's histories obtained through DCI for a period of one year from the date the record was received pursuant to 12 NCAC 4F .0701 shall result in the following penalties:**
 - (1) **First Offense - Individual Penalty (Warning) to each operator that contributed with a re-audit after 90 days;**

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- (2) Second Offense - Individual Penalty (Probation) and Agency Penalty (Warning);
 - (3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand) and;
 - (4) Fourth Offense - Individual Penalty (Revocation) and Agency Penalty (Probation).
- (i) Failure to utilize the proper CCH message key in accessing CCH whether or not resulting in an unauthorized dissemination pursuant to 12 NCAC 4F .0401, .0402, .0404, .0405, and .0407 shall result in the following penalties:
- (1) First Offense - Individual Penalty (Warning) with condition of agency re-audit after 90 days;
 - (2) Second Offense - Individual Penalty (Probation) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule;
 - (3) Third Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Reprimand) and;
 - (4) Fourth Offense - Individual Penalty (Revocation).
- (j) Improper use of CCH data in denial or revocation of a license or permit pursuant to 12 NCAC 4F .0406 shall result in the following penalties:
- (1) First Offense - Agency Penalty (Reprimand);
 - (2) Second Offense - Agency Penalty (Probation);
 - (3) Third Offense - Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non-criminal justice purposes for a period of six months and;
 - (4) Fourth Offense - Agency Penalty (Suspension of Services) with access suspended to computerized criminal history non-criminal justice purposes for one year. After one year of suspension the agency must seek reinstatement by appearing before the Advisory Policy Board.
- (k) Dissemination of CCH by a certified operator for an unauthorized purpose or to an unauthorized requestor pursuant to 12 NCAC 4E .0203; 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:
- (1) First Offense - Individual Penalty (Probation);
 - (2) Second Offense - Individual Penalty (Suspension of Certification) and Agency Penalty (Warning) and;
 - (3) Third Offense - Individual Penalty (Revocation).
- (l) Unauthorized use or dissemination of CCH by authorized personnel other than the certified operator pursuant to 12 NCAC 4F .0401, .0404, .0405, and .0407 shall result in the following penalties:
- (1) First Offense - Agency Penalty (Reprimand) with the agency submitting a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule with a re-audit to be conducted 90 days after training is complete;
 - (2) Second Offense - Agency Penalty (Suspension) of CCH services for a period of 90 days and;
 - (3) Third Offense - Agency Penalty (Suspension) of CCH services for a period of six months.
- (m) Failure to maintain and/or audit the DCI automated CCH log or a log of secondary dissemination pursuant to 12 NCAC 4F .0401 (e) or (f) shall result in the following penalties:
- (1) First Offense - Agency Penalty (Warning);
 - (2) Second Offense - Agency Penalty (Reprimand);
 - (3) Third Offense - Agency Penalty (Probation);
 - (4) Fourth Offense - Agency Penalty (Suspension of Service).
- (n) Failure of the operator to properly fill out a CCH/CHRI inquiry screen pursuant to 12 NCAC 4F .0401 shall result in the following penalties:
- (1) First Offense - Individual Penalty (Warning) to each operator that contributed with condition of and provisions authorizing an agency re-audit after 90 days;
 - (2) Second Offense - Individual Penalty (Probation) with the condition that the agency submit a written response to the SBI/DCI of a plan and date by which training is complete to prevent further violations of this Rule;
 - (3) Third Offense - Individual Penalty (Suspension of Certification) and an Agency Penalty (Reprimand) and; Fourth Offense - Individual Penalty (Revocation).
- (o) Failure of the agency maintaining management control over the certified operator to notify SBI/DCI of the employee's resignation or termination of employment pursuant to 12 NCAC 4E .0402(g):
- (1) First Offense - Agency Penalty (Warning) with condition of agency reaudit after 90 days;

- (2) Second Offense - Agency Penalty (Reprimand) with condition of agency reaudit after 90 days;
- (3) Third Offense - Agency Penalty (Probation) and;
- (4) Fourth Offense - Agency Penalty (Suspended Service).

SECTION .0200 - APPEALS

.0201 NOTICE OF VIOLATION

(a) Upon determination that a violation of these procedures has occurred, written notice of the violation shall be sent by certified mail, return receipt requested to the offending agency or employee. The notice shall inform the party of his appeal rights as provided in Paragraph (b) of this Rule and shall also contain the citation of the specific administrative rule alleged to have been violated.

(b) An operator, or an agency found to be in violation of these Rules may request an informal hearing before the Advisory Policy Board or may appeal directly to OAH by filing a petition for a contested case. A request for an informal hearing must be in writing and submitted to the SBI Assistant Director for DCI within 15 days from the date of notification of violation. A petition for a contested case must be filed with OAH within 60 days in accordance with G.S. 150B-23(f). DCI shall notify the offending agency or employee of the results of the informal hearing within two weeks following the hearing and inform the parties of their rights of appeal under G.S. 150B-23.

SECTION .0300 - INFORMAL HEARINGS

.0301 INFORMAL HEARING PROCEDURE

(a) Upon request made in accordance with Rule .0403(d) of Subchapter 4E or Rule .0201(b) of this Subchapter, the DCI Advisory Policy Board shall conduct an informal hearing pursuant to the G.S. 150B-22.

(b) Any agency or individual appearing before the Advisory Policy Board for a hearing may utilize the services of an attorney as their spokesman.

(c) The DCI Advisory Board shall consider the positions of the parties and make a recommendation to the SBI Assistant Director for DCI.

(d) This Assistant Director of DCI shall notify the parties of his decision within two weeks following the informal hearing and provide the parties of their further appeal rights in accordance with G.S. 150B-23.

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CHAPTER 7A. JUDICIAL DEPARTMENT
SUBCHAPTER XI. NORTH CAROLINA JUVENILE CODE
ARTICLE 54. JUVENILE RECORDS AND SOCIAL REPORTS

N.C. Gen. Stat. @ 7A-675 (1994)

@ 7A-675. Confidentiality of records

(a) The clerk of superior court shall maintain a complete record of all juvenile cases filed in the clerk's office to be known as the juvenile record, which shall be withheld from public inspection and, except as provided in this subsection, may be examined only by order of the judge. The record shall include the summons, petition, custody order, court order, written motions, the

electronic or mechanical recording of the hearing, and other papers filed in the proceeding. The recording of the hearing shall be reduced to a written transcript only when notice of appeal has been timely given. After the time for appeal has expired with no appeal having been filed, the recording of the hearing may be erased or destroyed upon the written order of the judge.

The following persons may examine the juvenile's record without an order of the judge:

(1) The juvenile, the juvenile's parent, guardian, or custodian, or another authorized representative of the juvenile.

(2) The prosecutor in a subsequent criminal proceeding against the juvenile.

The juvenile's record of an adjudication of delinquency for an offense that would be a Class A, B, C, D, or E felony if committed by an adult may be used in a subsequent criminal proceeding against the juvenile either under G.S. 8C-1, Article 404(b), or to prove an aggravating factor at sentencing under G.S. 15A-1340.4(a), G.S. 15A-1340.16(d), or G.S. 15A-2000(e). The record may be so used only by order of the judge in the subsequent criminal proceeding, upon motion of the prosecutor, after an in camera hearing to determine whether the record in question is admissible.

(b) The Chief Court Counselor shall maintain a record of the cases of juveniles under supervision by court counselors which shall include family background information; reports of social, medical, psychiatric, or psychological information concerning a juvenile or his family; a record of the probation reports of a juvenile; interviews with his family; or other information which the judge finds should be protected from public inspection in the best interest of the juvenile.

(c) The Director of the Department of Social Services shall maintain a record of the cases of juveniles under protective custody by his Department or under placement by the court. This file shall include material similar in nature to that described in subsection (b).

(d) The records maintained pursuant to subsections (b) and (c) may be examined only by order of the judge except that the juvenile shall have the right to examine them.

(e) Law-enforcement records and files concerning a juvenile shall be kept separate from the records and files of adults except in proceedings when jurisdiction of a juvenile is transferred to superior court. Law-enforcement

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Records and files concerning juveniles shall be open only to the inspection of the prosecutor, court counselors, the juvenile, his parent, guardian, and custodian.

(f) All records and files maintained by the Division of Youth Services shall be withheld from public inspection and shall be open only to the inspection of the juvenile, professionals in that agency who are directly involved in the juvenile's case, and court counselors. The judge authorizing commitment of a juvenile shall have the right to inspect and order the release of records maintained by the Division of Youth Services on that juvenile.

(g) Disclosure of information concerning any juvenile under investigation or alleged to be within the jurisdiction of the court that would reveal the identity of that juvenile is prohibited except that publication of pictures of runaways is permitted with the permission of the parents.

(h) Nothing in this section shall preclude the necessary sharing of information among authorized agencies.

(i) In the case of a child victim, a judge may order the sharing of information among such public agencies as the judge deems necessary to reduce the trauma to the child victim.

SUBCHAPTER 4F - SECURITY AND PRIVACY

SECTION .0100 - SECURITY AT LOCAL SITES

.0101 SECURITY OF DCI EQUIPMENT

(a) Agency heads who have management control of the DCI terminal shall institute controls for maintaining the sensitivity and confidentiality of all information provided by or through DCI. These controls will include, but are not limited to, the following:

- (1) the DCI terminal and printer shall be located in a secure area accessible only to authorized personnel;
- (2) the DCI terminal operator's manual and changes thereto shall be located in a secure area accessible only by authorized personnel; and
- (3) the DCI terminal equipment must be safeguarded from damage by excessive dirt, employee misuse, fire, floods and power failure.

If any damage occurs, it will be reported to the DCI computer center by telephone, or by switch message to the DCI central site. Users will be liable for payment for repairs resulting from negligence, abuse or misuse.

(b) Failure to maintain a secure site will be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(a) of this Chapter.

.0201 ELIGIBILITY FOR FULL OR LIMITED ACCESS TO THE DCI NETWORK

- (a) Eligibility for a full access DCI terminal or a computer interface with DCI is restricted to agencies which have obtained an NCIC ORI and have complied with Rule .0202 of this Section.
- (b) Eligibility for a limited access DCI terminal or computer interface with DCI is restricted to agencies which have obtained an NCIC limited access ORI and have complied with Rule .0202 of this Section.
- (c) Any agency in this state desiring an ORI shall make a written request to the SBI Assistant Director for DCI. Accompanying the written request shall be a copy of the state or local law which establishes such agency and describes the agency's functions and authority. The SBI Assistant Director for DCI shall, on the basis of his findings, obtain an FBI/NCIC ORI. If the request is denied by the FBI, the Assistant Director for DCI shall provide written findings to the requesting agency outlining the necessary elements to obtain an ORI.

.0202 MANAGEMENT CONTROL REQUIREMENTS

Each full access DCI terminal, computer interface with the DCI, and those personnel who operate the terminal must be under the direct and immediate management control of a criminal justice agency, criminal justice board or an NCIC/DCI approved non-criminal justice agency. The degree of management control shall be such that the agency head, board or approved agency has the authority to:

- (1) set policies and priorities concerning the use and operation of terminals or computers accessing DCI;
- (2) hire, supervise, suspend or dismiss those personnel who will be connected with the operation or use of the terminal or computers accessing DCI;
- (3) restrict unauthorized personnel from access or use of equipment accessing DCI; and
- (4) assure compliance with all rules and regulations of DCI in the operation of equipment or use of all information received.

.0302 USER ACCESS FEE AGREEMENT

- (a) The governing bodies of each jurisdiction having a DCI terminal or an interface to DCI shall enter into an agreement with DCI agreeing to assume user costs established by DCI beginning on the day of installation. This fee is to recover a part of the cost of data processing services.
- (b) DCI maintains four types of user access fee agreements:
 - (1) municipal access fee agreement;
 - (2) county access fee agreement;
 - (3) state purchase order; and
 - (4) federal purchase order.
- (c) Failure to pay the user access fee within the prescribed time may result in the termination of services. Termination of service shall be preceded by a late notice allowing sufficient time to make payment.

**SECTION .0400 - COMPUTERIZED CRIMINAL HISTORY ACCESS AND USE
REQUIREMENTS**

.0401 DISSEMINATION OF CCH RECORDS

(a) Except as provided by Rules .0402, .0404, .0406, of this Section criminal history record information obtained from or through DCI, NCIC, or NLETS shall not be disseminated to anyone outside of those agencies eligible under Subchapter 4E Rule .0201(a) of this Chapter. Any agency assigned an ORI number with a suffix of "P" shall not obtain criminal history record information. Any agency requesting criminal history record information which has not received an ORI pursuant to Subchapter 4E Rule .0201(a) of this Chapter should be denied access and referred to the SBI Assistant Director for DCI.

(b) Criminal history record information is available to eligible agency personnel only on a "need-to-know" or "right-to-know" basis as defined in Subchapter 4E Rule .0104 of this Chapter.

(c) The use or dissemination of computerized criminal history for unauthorized purposes will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(k) and (l) of this Chapter.

(d) Each criminal justice agency obtaining criminal history record information through DCI shall maintain a log of dissemination on all positive responses (indicating a criminal record) for a period of not less than one year from the date the record was obtained. The documentation log must contain the following information:

- (1) date of inquiry;
- (2) name or initials of terminal operator;
- (3) name or record subject;
- (4) state identification number (SID) or FBI number of the record subject;
- (5) message key used to obtain information;
- (6) purpose (actual need i.e.: criminal investigation, taxi cab permit, etc.);
- (7) name of person requesting information; and
- (8) name of secondary dissemination, if any.

(e) Dissemination logs shall be available for audit or inspection by the SBI Assistant Director for DCI or his designee at such time as they may require, as provided in Section .0800, Rule .0801 of this Subchapter.

(f) Direct or indirect access agencies with a DCI terminal responding to an out-of-state request for criminal history record information through NLETS shall only respond with criminal history record information received within their jurisdiction and maintained in their files. Out-of-state agencies requesting a statewide criminal record check should be directed to use the state automated file.

(g) Agencies that fail (failure is defined as more than 10 percent deficient) to record all required data on the log of dissemination as required in Paragraph (d) of this Rule will be in violation of Subchapter 4G Rule .0102(m) of this Chapter.

(h) Agencies that fail (failure is defined as more than 10 percent deficient) to maintain a log of dissemination of "positive" criminal history record information obtained through DCI for a period of one year as required in Paragraph (d) of this Rule will be in violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(n) of this Chapter.

.0402 ACCESSING OF CCH RECORDS

(a) Any accessing of or inquiry into the CCH records must be made with the proper message key only and must be for the intended transaction or purpose for which the message key is designed.

(b) Any accessing of or inquiry into the III using an improper message key resulting in a record being routed to a terminal and displayed on the screen shall be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(i) of this Chapter.

(c) Any dissemination by a certified operator for an unauthorized purpose or to an unauthorized requestor shall be a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(K) of this Chapter.

.0403 USE OF CCH FOR CRIMINAL JUSTICE EMPLOYMENT

- (a) DCI processes criminal justice applicant fingerprint cards required pursuant to statute.
 - (b) Agencies must submit two applicant fingerprint cards on each individual containing the following information in order to be processed by the SBI and FBI:
 - (1) complete name;
 - (2) date of birth;
 - (3) race;
 - (4) sex;
 - (5) position applied for;
 - (6) hiring agency; and
 - (7) a set of rolled-inked fingerprint impressions.
- Any fingerprint cards received by DCI which do not meet these requirements will be returned to the submitting agency to be corrected and resubmitted.
- (c) All criminal justice applicant fingerprint cards and the resulting record response are returned to the appropriate agencies and are not maintained by DCI.

.0404 INDIVIDUAL'S RIGHT TO REVIEW

- (a) An individual may obtain a copy of his or her own criminal history record by submitting a written request to the North Carolina State Bureau of Investigation, Division of Criminal Information, Identification Section, 407 North Blount Street, Raleigh, North Carolina 27601-1073. The written request must be accompanied by a certified check or money order in the amount of fourteen dollars (\$14.00) payable to the North Carolina Department of Justice, and must contain proof of identity to include:

- (1) complete name and address;
- (2) race;
- (3) sex;
- (4) date of birth;
- (5) social security number; and
- (6) a set of rolled-inked fingerprint impressions.

This procedure guarantees positive identification and insures that the individual receives a copy of his or her own record as currently maintained in the SBI Identification file including CCH and AFIS.

- (b) The accuracy and completeness of an individual's record may be challenged by submitting the written exceptions form available from the DCI.

- (c) Upon receipt of the written exceptions form, the Identification Section Supervisor shall initiate an internal record audit of the challenger's record to determine its accuracy. If any inaccuracies or omissions are discovered, the Identification Section will make appropriate additions, deletions or alterations to the record. Notice of any changes made will be given to the challenger, and to any agency to which the inaccurate or incomplete information has been disseminated. The challenger shall be informed in writing of the results of the audit.

- (d) If the audit fails to disclose any inaccuracies, or if the challenger wishes to contest the results of the audit, he is entitled to an administrative hearing pursuant to G.S. 150B-23.

.0405 CCH LICENSING AND NON-CRIMINAL JUSTICE EMPLOYMENT PURPOSES

- (a) Criminal justice agencies authorized under Subchapter 4E Rule .0201 of this Chapter which issue licenses or approve non-criminal justice employment and want to use computerized criminal history information maintained by DCI for licensing, permit, and non-criminal justice employment purposes shall submit to the SBI Assistant Director for DCI a written request listing the types of licenses, permits, and employment for which they desire to use computerized criminal history information. A copy of the local ordinance(s) and or a reference to the North Carolina General Statute(s) giving authority to issue a particular permit or license must be included in the written request.

- (1) Authorization to use computerized criminal history information for licensing, permit, or employment purposes may be given only after the SBI Assistant Director for DCI and the North Carolina Attorney General's Office have evaluated and granted authorization based upon the authority of the North Carolina General Statutes and or local ordinance pertaining to the issuance of that particular license or permit for employment;
 - (2) Upon authorization, a written notice will be submitted to the requesting agency authorizing that agency to use computerized criminal history information maintained by DCI for specified licensing permit or employment purposes;
 - (3) After notice of authorization has been given, the agency's terminal, if applicable, will receive the capability to use the purpose code "E" in the purpose field of the computerized criminal history inquiries for employment-licensing. Once an agency has received this capability, it shall be required to use the purpose code "E", the proper two character code, and an abbreviation of the ultimate recipient of the records name. A log of all primary and any secondary dissemination must also be kept for one year on all positive responses received from this type of inquiry.
- (b) Criminal justice agencies may also gain access by submission of non-criminal justice applicant fingerprint cards. Approval must be obtained pursuant to the procedure in Paragraph (a) of this Rule and a Fee for Service Agreement must be signed prior to the release of criminal history information. Two applicant fingerprint cards must be submitted on each individual accompanied by a check or money order in the amount of fourteen dollars (\$14.00) if the agency has not signed the DCI Billing Agreement. The fingerprint cards must contain the following information on the applicant in order to be processed by the SBI and FBI: complete name, date of birth, race, sex, reason fingerprinted to include the N.C.G.S., position applied for, the licensing employing agency, and a set of rolled-inked fingerprint impressions. The fingerprint cards shall be returned to the agency denoting a prior record or with a no record response.
- (c) Requests from non-criminal justice agencies or individuals to use criminal history information maintained by DCI for licensing and employment purposes shall be treated as a fee for service request pursuant to G.S. 114-19.1 or any other applicable statute. All such requests shall be submitted in writing on forms approved by the Attorney General to the SBI Assistant Director for DCI who shall recommend approval or disapproval as appropriate. The Assistant Director may consult with the Advisory Policy Board if he deems it necessary prior to making a final recommendation to the Department of Justice.
- (1) Upon being approved, the requesting agency shall submit its requests to the Division of Criminal Information, attention: Identification Section, 407 North Blount Street, Raleigh, North Carolina 27601-1073. Each request shall include sufficient documentation to establish and verify identity such as complete name, race, sex, date of birth, and social security number. Each request shall include a reasonable fee of fourteen dollars (\$14.00) established for such requests in the form of a certified cashier's check or money order; and
 - (2) Criminal history information accessible by authorization of this Section shall be North Carolina criminal history information only.

.0406 RESTRICTIVE USE OF CCH FOR EMPLOYMENT PURPOSES

(a) Use of computerized criminal history information maintained by the DCI for licensing permits or non-criminal justice employment purposes shall only be authorized for those criminal justice and non-criminal justice agencies who have complied with Rule .0405 of this Section.

(b) The following requirements and restrictions shall be applicable to all agencies who have received approval to use computerized criminal history information for licensing, permits, or non-criminal justice employment purposes. Each such agency shall be responsible for their full and prompt implementation:

- (1) in no case shall computerized criminal history information obtained be used or disseminated for any other purpose;
- (2) in no case shall computerized criminal history information obtained be released to or reviewed by anyone other than the agencies authorized by the SBI Assistant Director for DCI;
- (3) the only data in the computerized criminal history files which can be used in an agency's determination of issuing or denying a license, permit or employment are those crimes stipulated in the referenced ordinance or statutory authority as grounds for disqualification. All criminal

history arrest information held by DCI will be released regardless of disposition status. Each agency shall be responsible for reviewing each statutory authority and knowing what data can and cannot be used for grounds in denying or issuing a particular license or permit for employment;

- (4) Prior to denial of a license, permit, or employment due to data contained in a computerized criminal history record, a fingerprint card of the applicant shall be submitted to the SBI, DCI Identification Section for verification that the record belongs to the applicant;
- (5) If the information in the record is used to disqualify an applicant, the official making the determination of suitability for licensing or employment shall provide the applicant the opportunity to complete, or challenge the accuracy of the information contained in the record. The applicant must be afforded a reasonable time to correct, complete or to decline to correct or complete the information. An applicant should not be presumed to be guilty of any charge arrest for which there is no final disposition stated on the record or otherwise determined. Applicants wishing to correct, complete or otherwise challenge a record must avail themselves of the procedure set forth in Rule .0404 Paragraph (c) of this Section. Improper use of CCH data in denial or revocation of a license or permit is a violation of this Rule and subject to the provisions of Subchapter 4G Rule .0102(j) of this Chapter.

(c) A "no-hit" on a computerized criminal history inquiry does not necessarily mean that the individual does not have a record. If the requesting agency desires a more complete check on an applicant, a fingerprint card of the applicant should be submitted to DCI.

.0407 RESEARCH USE AND ACCESS OF CCH RECORDS

(a) Researchers who wish to use criminal justice information maintained by DCI shall first submit to the SBI Assistant Director for DCI a completed research design that guarantees adequate protection of security and privacy. Authorization to use computerized criminal history records may be given after the SBI Assistant Director for DCI has approved the research design.

(b) Prior to making a decision whether or not to authorize a particular researcher access to CCH, the SBI Assistant Director for DCI may consult with the DCI Advisory Policy Board.

(c) In making a determination, the Assistant Director and the Advisory Policy Board must insure that an individual's right to privacy will not be violated by the research program, that the program is calculated to prevent injury or embarrassment to any individual, that the results outweigh any disadvantages that are created for the North Carolina criminal justice system if the research information is provided, that the criminal justice community benefit from the research and use, and that the requestor be responsible for cost.

(d) For purposes of this Section, a researcher shall be defined as a non-criminal justice/private agency or a criminal justice agency wishing to access criminal history data for a statistical purpose.

.0408 LIMITATION REQUIREMENTS

Research designs must preserve the anonymity of all subjects. The following requirements shall be applicable to all such programs of research and each criminal justice agency and/or researcher shall be responsible for their full and prompt implementation:

- (1) In no case shall computerized criminal history records furnished for purposes of any program of research be used to the detriment of the person(s) to whom such information relates.
- (2) In no case may computerized criminal history records furnished for purposes of any program of research be used for any other purpose; nor may such information be used for any program of research other than that authorized by the SBI Assistant Director for DCI.
- (3) Each researcher or anyone having access to the computerized criminal history shall, prior to having such access, sign a Disclosure Agreement with the SBI Assistant Director for DCI incorporating the requirements of Subchapter 4E Rule .0305 of this Chapter.
- (4) In every case the authorization for access to computerized criminal history records shall assure that the criminal justice agency and the SBI Assistant Director for DCI has full and complete rights to monitor the program of research to assure compliance with this Regulation. Such monitoring

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- rights shall include the right of DCI staff and the DCI Advisory Policy Board to audit and review such monitoring activities and also to pursue their own monitoring activities.
- (5) Each program of research shall preserve the right of DCI and the criminal justice agency involved to examine and verify the data generated as a result of the program, and, if a material error or omission is found to have occurred, to order that the data not be released for any purpose unless corrected to the satisfaction of the agency and DCI.

SECTION .0500 - REMOVAL OF CRIMINAL HISTORY RECORD INFORMATION

.0501 EXPUNGEMENTS

(a) Criminal history record information may be expunged from NC CCH files when the petitioner follows the guidelines outlined in the NC General Statutes.

(b) Upon the receipt of a valid court ordered expungement, the Identification Section of DCI will expunge the appropriate CHRI as directed by the court order. The court order will be forwarded to the FBI for processing and all agencies which have inquired on the record within the past 90 days will be advised of the court order.

(c) The person seeking the expungement shall pay a fee of fourteen dollars (\$14.00).

.0502 PURGES

(a) DCI will purge criminal history record information on deceased subjects upon the receipt of two sets of post mortem fingerprints. Deceased records are retained at DCI for one year and then are transferred to the State Records Center and retained there for five years.

(b) DCI will also purge criminal history record information when an individual attains the age of 80 years. Once purged, these records are retained for one year and then transferred to the State Records Center and retained there for five years.

.0801 AUDITS

(a) DCI must biennially audit criminal justice information entered, modified, cancelled, cleared and disseminated by DCI terminal users. Agencies subject to audit include all agencies which have direct or indirect access to information obtained through DCI.

(b) DCI shall send designated representative(s) to selected law enforcement and criminal justice agency sites to audit:

(1) criminal history dissemination logs;

(2) driver history dissemination logs;

(3) security safeguards and procedures adopted for the filing, dissemination, or destruction of criminal history records;

(4) secure location and access of DCI terminals;

(5) documentation establishing the accuracy and validity of records entered into DCI/NCIC wanted, missing person, and property files; and

(6) fingerprint submissions of arrestees.

(c) The audits will be conducted to ensure that the agencies are complying with DCI's regulations, as well as federal and state statutes on security and privacy of criminal history record information.

(d) DCI may, at its discretion, conduct audits of Incident Base agencies to insure compliance with applicable rules, regulations, and acceptable reporting standards.

SECTION .0200 - APPEALS

.0201 NOTICE OF VIOLATION

(a) Upon determination that a violation of these procedures has occurred, written notice of the violation shall be sent by certified mail, return receipt requested to the offending agency or employee. The notice shall inform the party of his appeal rights as provided in Paragraph (b) of this Rule and shall also contain the citation of the specific administrative rule alleged to have been violated.

(b) An operator, or an agency found to be in violation of these Rules may request an informal hearing before the Advisory Policy Board or may appeal directly to OAH by filing a petition for a contested case. A request for an informal hearing must be in writing and submitted to the SBI Assistant Director for DCI within 15 days from the date of notification of violation. A petition for a contested case must be filed with OAH within 60 days in accordance with G.S. 150B-23(f). DCI shall notify the offending agency or employee of the results of the informal hearing within two weeks following the hearing and inform the parties of their rights of appeal under G.S. 150B-23.

FINGERPRINT, PHOTOGRAPH, AND RETAIN JURISDICTION OF DELINQUENT JUVENILES

Sec. 23.2. (a) Article 48 of Chapter 7A of the General Statutes is amended by adding a new section to read:

"§ 7A-603. Fingerprinting and photographing delinquent juveniles.

(a) A juvenile shall be fingerprinted and photographed by a law enforcement officer or agency upon adjudication of the juvenile as a delinquent pursuant to G.S. 7A-637 if the juvenile was 10 years of age or older at the time the juvenile allegedly committed an offense that would be a Class A, B, C, D, or E felony if committed by an adult. Upon adjudication, the court shall order the juvenile be fingerprinted and photographed in a proper format for transfer to the State Bureau of Investigation.

(b) Fingerprints obtained pursuant to this section shall be transferred to the State Bureau of Investigation in a format approved by the State Bureau of Investigation and placed in the Automated Fingerprint Identification System (AFIS) to be used for all investigative and comparison purposes. Photographs shall be placed in a format approved by the State Bureau of Investigation and may be used for all investigative or comparison purposes.

(c) Fingerprints and photographs taken pursuant to this section are not public records under Chapter 132 of the General Statutes, shall not be included in the clerk's record pursuant to G.S. 7A-675, shall be maintained separately from any juvenile record, shall be withheld from public inspection or examination, and shall not be eligible for expunction pursuant to G.S. 7A-676."

(b) G.S. 15A-502(c) reads as rewritten:

"(c) This section does not authorize the taking of photographs or fingerprints of a juvenile alleged to be delinquent except under G.S. 7A-596 through ~~7A-601~~, 7A-601 and 7A-603."