

NCBDN USE OF CRIMINAL HISTORY RECORDS POLICY

If criminal history record information (CHRI) is returned from the State Bureau of Investigations (SBI) reporting a pending criminal charge(s), or that an applicant has been convicted, indicted, found guilty, plead no contest, or entered a guilty plea of a misdemeanor or felony (including DWI, DUI, careless and reckless driving, or any offense involving serious injury or death) other than a minor traffic violation (that has not been expunged), and the applicant did not provide such information in the applicant's application for licensure, an inquiry letter will be sent to the applicant. This letter will outline the criminal record information reported by the applicant, if any, and the discrepancy provided in the returned report from the SBI.

The applicant will be asked to provide additional information regarding the reported charges, including completing the Board's Form C2, and supplying any supplemental documentation asked for on this form. Additionally, the applicant will be asked to explain why the applicant failed to report the pending charges and/or convictions detailed in the CHRI report. Such letter shall also note, as was stated in the Release form, that the applicant will be provided an opportunity to challenge the accuracy of the information in the returned record. Additionally, the letter shall provide that the procedures for obtaining a change, correction, or update of one's criminal history record are set forth at 28 CFR § 16.34, indicate that the applicant may obtain a copy of the national report directly from the FBI as provided in 28 CFR § 16.32, or obtain a copy of the North Carolina only report under what is known as a [*Right to Review*](#).

Applicants shall submit a written response to the inquiry to the Board within 45 days from the date the inquiry letter was sent. The Board shall grant up to an additional 30 days for the response where the applicant demonstrates good cause for the extension of time. The response shall contain accurate and complete information, as well as any supporting documentation deemed necessary. Where an applicant fails to respond in the time and manner provided herein, the applicant may be held by the Board to be interfering with an investigation by willful misrepresentation of facts under 21 NCAC 17.0114(16) in violation of G.S. 90-363(7).

Dependent upon the findings of the Board concerning the possible failure of the applicant to initially provide accurate information in his or her application regarding criminal history, the applicant may be subject to discipline pursuant to G.S. 90-363.

Applicants' criminal history record itself shall not automatically bar issuance of a license by the Board to the applicant. As provided in G.S. 90-357.6:

The Board shall consider all of the following factors regarding the conviction:

- (1) The level of 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 person's prison, jail, probation, parole, rehabilitation, and employment records since the date the crime was committed.

(7) Any subsequent commission of a crime by the applicant.

If, after reviewing the factors, the Board determines that the grounds set forth in G.S. 90-363 exist, the Board may deny licensure of the applicant. The Board may disclose to the applicant information contained in the criminal history record check that is relevant to the denial. The Board shall not provide a copy of the criminal history record to the applicant.¹ The applicant shall have the right to appear before the Board to appeal the Board's decision. However, an appearance before the full Board shall constitute an exhaustion of administrative remedies in accordance with Chapter 150B of the General Statutes.

Additionally, effective October 1, 2019, the Board shall also follow the requirements of Session Law 2019-91, which provides:

(b) Unless federal law governing a particular board provides otherwise, a board may deny an applicant on the basis of a conviction of a crime only if the board finds that the applicant's criminal conviction history is directly related to the duties and responsibilities for the licensed occupation or the conviction is for a crime that is violent or sexual in nature. Notwithstanding any other provision of law, a board shall not automatically deny licensure on the basis of an applicant's criminal history, and no board may deny an applicant a license based on a determination that a conviction is for a crime of moral turpitude. The board shall make its determination based on the factors specified in subsection (b1).

(b1) Before a board may deny an applicant a license due to a criminal conviction under subsection (b) of this section, the board must specifically consider all of the following factors:

- (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 crime.
- (4) The circumstances surrounding the commission of the crime, if known
- (5) The nexus between the criminal conduct and the prospective duties of the applicant as a licensee.
- (6) The prison, jail, probation, parole, rehabilitation, and employment records of the applicant since the date the crime was committed.
- (6a) The completion of, or active participation in, rehabilitative drug or alcohol treatment.(6b) A Certificate of Relief granted pursuant to G.S. 15A-173.2.
- (7) The subsequent commission of a crime by the applicant. (8) Any affidavits or other written documents, including character references.

¹ Although G.S. 90-357.6 does not allow the Board to provide the applicant with a copy of the report, per the requirements of Session Law 2019-91, the Board shall direct applicants to SBI to obtain a personal copy of his/her background check, under what is known as a *Right to Review*, which is available here: <https://www.ncsbi.gov/Services/Background-Checks>.

(b2) If the board denies an applicant a license under this section, the board shall:

(1) Make written findings specifying the factors in subsection (b1) of this section the board deemed relevant to the applicant and explaining the reason for the denial. The board's presiding officer must sign the findings.

(2) Provide or serve a signed copy of the written findings to the applicant within 60 days of the denial.

Denial, refusal to renew, suspension, revocation or imposition of probationary conditions upon a license may be ordered by the Board after a hearing held in accordance with Article 3A of Chapter 150B of the General Statutes and rules adopted by the Board. Per G.S. §150B-43, any party or person aggrieved by the final decision in a contested case, and who has exhausted all administrative remedies made available to the party or person aggrieved by statute or agency rule, is entitled to judicial review of the decision.