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NORTH CAROLINA
STATE BUREAU OF INVESTIGATION

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ROBERT SCHURMEIER
DIRECTOR

**NON-CRIMINAL JUSTICE ACCESS AGREEMENT FOR NATIONAL CRIMINAL HISTORY FOR
LONG TERM CARE FACILITIES UNDER SENATE BILL 41 (2005)**

In order to gain access to obtain criminal history record checks through the State Bureau of Investigation (SBI) and the Federal Bureau of Investigation (FBI), the following items **must** be submitted:

1. A copy of your agency license provided by DHHS/DFS.
2. **On Agency letterhead that includes agency name, address, telephone, email and fax number:**
 - a) A letter from the Administrator of the agency stating who will be responsible for the billing invoice along with their email.
 - b) The name(s) and emails of the individual(s) who will be designated as an authorized official(s) to submit and/or receive criminal history record information from the SBI and FBI.
 - c) Federal Tax Identification Number (EIN) for billing purposes.
 - d) How the Criminal History Record Information (CHRI) obtained from the NCSBI and/or the FBI will be secured/stored. **Note: CHRI cannot be stored with personnel files.**
3. The Rules and Regulations form must be read and signed by **ALL** personnel designated as an authorized official.
4. Access Agreement read, signed and dated by the Administrator and **notarized on the fifth page.**

Please return pages 1-5 of the completed access agreement with all supporting documentation listed above. Ensure that all documents are ONE-SIDED. We will mail you a copy of the approved access agreement.

Should you have any questions or concerns, please feel free to contact our **Access Integrity Unit** at AIUhelp@ncsbi.gov



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STATE BUREAU OF INVESTIGATION
SPECIAL OPERATIONS DIVISION
NON-CRIMINAL JUSTICE ACCESS AGREEMENT

This agreement made and entered into by and between the State Bureau of investigation, Criminal Information and Identification Section, Access Integrity Unit (hereafter referred to as "SBI") and _____ **Long Term Care** Health Care Provider (hereafter referred to as "HCP") for the purpose and consideration hereafter set out:

I. Purpose:

The purpose of this Agreement is to outline the responsibilities of the HCP in regards to requesting North Carolina Criminal History Record Information (CHRI) and receiving CHRI from the SBI routed through DHHS and the proper use and dissemination of that data by authorized personnel of the HCP.

II. Responsibilities of SBI:

- A. SBI agrees to provide the appropriate training to the HCP as requested or needed for the above mentioned SBI system access.
- B. SBI agrees to notify the HCP of any changes in the record disseminated to the HCP, due to a court ordered expungement, which are discovered by the SBI within ninety (90) days of dissemination of such record to the HCP.
- C. SBI will notify the HCP six (6) months in advance of any change in the cost of providing CHRI.
- D. SBI may conduct a compliance audit of the HCP in regards to the handling and dissemination of CHRI at any time. SBI will conduct at least one (1) audit every three (3) year cycle.

III. Responsibilities of the HCP:

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

- A. The HCP hereby represents that the **purpose for which it is authorized to request national CHRI is on individuals who have applied for employment and have resided in North Carolina for less than five years.** DHHS will receive the national record from the SBI and notify provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. Access is allowed for direct access pursuant to N.C.G.S. 122C-80, 114-19.10, 131D-40, and 131E-265.
- B. The HCP further agrees that its request/use of CHRI is for the above stated purpose alone and for no other, and that neither it, nor any of its employees, shall make any other or further use of such information.
- C. The HCP must make requests in writing through the Authorized Official to the SBI, and such requests from other HCP Officials will not be honored. The applicant's/employee's complete name, sex, race, date of birth, social security number (optional) and any other descriptive data as shall be appropriate to identify the individual, shall be submitted on the fingerprint card provided by the SBI. **The HCP understands that it will not submit the Authority for Release of Information form to the SBI with each set of fingerprints. However, the Authority for Release of Information form shall be retained by the HCP for a minimum period of one (1) year from the date the fingerprints are submitted to the SBI.**
- D. The HCP understands that under no circumstances shall CHRI obtained from or through the SBI or the DHHS be released to or reviewed by anyone other than the HCP and its authorized officials and may only be used for purposes authorized under N.C.G.S. 122C-80, 114-19.10, 131D-40, and 131E-265.
- E. The HCP agrees to notify the SBI in writing prior to entering a contract with a third party for outsourcing services that will require the third party to have access to CHRI supplied by the SBI and/or the FBI.
- F. The HCP shall be responsible for the security and privacy of the CHRI received by it or received by a private contractor pursuant to a specific agreement with the HCP. It is the responsibility of the HCP to comply with the most recent versions of the FBI Criminal Justice Information Services (CJIS) Security Policy and the Security and Management Control Outsourcing Standard for Non-Channelers and to ensure any private contractor receiving CHRI is also in full compliance with the policies, protocols, and procedures set forth in these documents.

- G. The HCP shall be responsible for the security and privacy of the CHRI it receives. The CHRI shall be kept under lock and key, separate from the Personnel Files. The CHRI shall only be available to the authorized officials as set forth in this access agreement.
- H. The HCP shall be responsible for reviewing its laws and knowing what data can and cannot be used as grounds in denying or terminating employment in accordance with standards in the appropriate enabling legislation referred to above.
- I. The submission of an individual's fingerprint card is the only means by which the SBI can accurately match the individual to the criminal record on file with the SBI. Furthermore, the HCP understands that the procedure utilized under this agreement involves a national fingerprint-based criminal record search.
- J. Also, the HCP understands that the SBI and the FBI maintains only those records for which an individual is required by law to submit to the fingerprinting process; consequently, there are criminal records maintained by other states or local agencies that are not on file with the SBI or the FBI.

The HCP understands in order to obtain a national criminal history record check one (1) applicant fingerprint card shall be submitted to the SBI for processing.

- K. The HCP agrees to pay the fee of thirty-eight (\$38.00) dollars for every fingerprint card processed for a national CHRI check. The HCP understands it will be billed at the end of each month for the amount due. The HCP will return a copy of the invoice with the HCP's check in the amount of the total payment due. The payment is due the following month. The HCP's check should be made payable to the North Carolina State Bureau of Investigation and mailed to:

N.C. State Bureau of Investigation
Attn: Business Office
Post Office Box 29500
Raleigh, North Carolina 27626 -0500

- L. If the information in the CHRI record is used to disqualify an individual, the official making the determination of suitability for employment shall provide the individual the opportunity to provide additional information, or challenge the accuracy of the information contained in the CHRI record. The official may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant. The individual must be afforded a reasonable time to correct or complete this information. An individual should not be presumed to be guilty of any charge/arrest for which there is no final disposition stated on the CHRI record. Any individual wishing to correct, complete or otherwise challenge a CHRI record must avail themselves of the procedures set forth in the Division of

Criminal Information (DCI) administrative procedures. (14B NCAC 18B.0404)

IV: Penalties/Liability

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

AGENCY should complete required fields below

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

Name of Agency _____

By: _____
Signature and Printed Name of Agency Authorized Official

_____ County, North Carolina

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

Date: _____

(Official Signature of Notary Public)

(Notary's Typed or Printed Name)

My Commission Expires _____

(Seal)

NCSBI OFFICIAL USE ONLY

This Agreement becomes effective on (Month/Day) _____, (Yr) _____.

By: _____ Date: _____

Signature of Authorized Official and Title
Criminal Information and Identification Section

_____ County, North Carolina

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

Date: _____

(Official Signature of Notary Public)

(Notary's Typed or Printed Name)

My Commission Expires _____

(Seal)

Regulations Regarding Receipt of Criminal History Record Information North Carolina State Bureau of Investigation

1. Criminal history record information (CHRI) received from the NCSBI and the FBI (if applicable) must be kept locked and secured. It should only be available to the contact persons listed at the NCSBI.
2. CHRI received by the agency should not be given to another agency or the applicant.
3. If the applicant should need to challenge his/her record, they should contact the State Bureau of Investigation Applicant Unit for a Right to Review.
4. CHRI should only be used for the original hire/not hire decision. CHRI can change or be updated at any time and, therefore, should not be held for any other use.
5. The Authority for Release of Information form or the Electronic Form should be maintained for one year.
6. To dispose of the CHRI and the fingerprint card, either shred the information or burn it. It is not acceptable to discard the CHRI in the trash can. Also, the agency should not have an outside agency do the shredding (called outsourcing). The agency must handle the shredding or burning of the documents in-house, then the agency can outsource the shredded items.
7. Best practice – the NCSBI recommends that anyone with a felony conviction not have access to the CHRI.
8. If CHRI is received with an arrest that does not have a final court disposition, the clerk of court in the county the person was arrested must be contacted to obtain the disposition before denying employment. If the agency does not understand the meaning of a charge or a disposition, contact the clerk of court in the arresting county for a definition.
9. Best practice - the NCSBI recommends doing a background check on all personnel that will be handling the CHRI. If the North Carolina General Statute for the agency does not allow a background check, a public record check through the Administrative Office of the Courts can be conducted.
10. **Do NOT** ask a law enforcement agency to conduct name checks for the agency. There must be an approved local ordinance in place for this process.
11. When filling out the fingerprint card, follow the sample provided by the NCSBI.
12. Please keep a copy of the access agreement on file for audit purposes. Also, keep the original of the applicant's Authority for Release of Information form or Electronic Release form on file for one year.
13. **Do NOT** give a copy of the Authority for Release of Information form to another agency.
14. Invoices will be mailed the first day of each month.
15. To order fingerprint cards, fax a request to 919-661-5977.
16. For questions, please contact:
 - a. Applicant Unit Supervisor contact 919-582-8661.
 - b. For invoice questions (payments) contact 919-582-8552.
 - c. NCSBI fax numbers are 919-661-4890 and 919-661-5977.
17. NCSBI mailing address is: State Bureau of Investigation, Criminal Information and Identification Section, Attention: CIIS - Access Integrity Unit, PO Box 29500, Raleigh, NC 27626.
18. Please ensure all contact personnel sign a copy of this form and include it in the packet mailed to the NCSBI. Photocopies of this form may be made as needed.

Signature of Official Receiving CHRI _____ Date _____

Printed Name and Title of Official _____

Agency Name _____

Address _____

Agency Phone Number _____ Email _____

*** This form should be signed by all personnel who will receive/view the CHRI.
(Recommend no more than three for security purposes.) This form may be photocopied.***

Article 3A.

Miscellaneous Provisions.

§ 122C-80. Criminal history record check required for certain applicants for employment.

(a) Definition. – As used in this section, the term "provider" applies to an area authority/county program and any provider of mental health, developmental disability, and substance abuse services that is licensable under Article 2 of this Chapter.

(b) Requirement. – An offer of employment by a provider 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 State and national criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A provider shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Except as otherwise provided in this subsection, within five business days of making the conditional offer of employment, a provider shall submit a request to the Department of Public Safety under G.S. 143B-939 to conduct a criminal history record check required by this section or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 143B-939, the Department of Public Safety shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the provider as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the provider. Providers shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. A county that has adopted an appropriate local ordinance and has access to the Department of Public Safety data bank may conduct on behalf of a provider a State criminal history record check required by this section without the provider having to submit a request to the Department of Justice. In such a case, the county shall commence with the State criminal history record check required by this section within five business days of the conditional offer of employment by the provider. All criminal history information received by the provider is confidential and may not be disclosed, except to the applicant as provided in subsection (c) of this section. For purposes of this subsection, the term "private entity" means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency.

(c) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the provider 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 provider. If the provider disqualifies an applicant after consideration of the relevant factors, then the provider may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(d) Limited Immunity. – A provider and an officer or employee of a provider that, in good faith, complies with this section shall be immune from civil liability for:

- (1) The failure of the provider to employ an individual on the basis of information provided in the criminal history record check of the individual.
- (2) Failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(e) Relevant Offense. – As used in this section, "relevant offense" means a county, state, or federal criminal history of conviction or pending indictment of a crime, whether a misdemeanor or felony, that bears upon an individual's fitness to have responsibility for the safety and well-being of persons needing mental health, developmental disabilities, or substance abuse services. 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 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses Against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. 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.

(f) Penalty for Furnishing False Information. – Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(g) Conditional Employment. – A provider may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

- (1) The provider shall not employ an applicant prior to obtaining the applicant's consent for criminal history record check as required in subsection (b) of this section or the completed fingerprint cards as required in G.S. 143B-939.
- (2) The provider shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment. (2000-154, s. 4; 2001-155, s. 1; 2004-124, ss. 10.19D(c), (h); 2005-4, ss. 1, 2, 3, 4, 5(a); 2007-444, s. 3; 2012-12, s. 2(tt); 2014-100, ss. 17.1(q), (ddd); 2015-181, s. 47.)

§ 143B-932. 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 Public Safety may provide to any of the following entities a criminal record check of an individual who is employed by that entity, has applied for employment with that entity, or has volunteered to provide direct care on behalf of that entity:

- (1) Hospitals licensed under Chapter 131E of the General Statutes.
- (2) Hospices licensed under Chapter 131E of the General Statutes.
- (3) Child placing agencies licensed under Chapter 131D of the General Statutes.
- (4) Residential child care facilities licensed under Chapter 131D of the General Statutes.
- (5) Hospitals licensed under Chapter 122C of the General Statutes.
- (6) Licensed child care facilities and nonlicensed child care homes regulated by the State.
- (7) 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 Public Safety to identify that individual. A criminal record check shall be provided only if the individual whose record is checked consents to the record check. The information shall be kept confidential by the entity that receives the information. Upon the disclosure of confidential information under this section by the entity, the Department may refuse to provide further criminal record checks to that entity.

(c) Foster or Adoptive Parent. - The Department of Public Safety, 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.

(d) 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). (1993, c. 403, s. 1; 1995, c. 453, s. 1; 1995 (Reg. Sess., 1996), c. 606, s. 1; 1997-506, s. 38; 2000-154, s. 5; 2003-214, s. 1(2); 2014-100, ss. 17.1(m), (o).)

§ 143B-939. Criminal record checks for adult care homes, nursing homes, home care agencies, and providers of mental health, developmental disabilities, and substance abuse services.

The Department of Public Safety may provide to the following entities the criminal history from the State and National Repositories of Criminal Histories:

- (1) Nursing homes or combination homes licensed under Chapter 131E of the General Statutes.
- (2) Adult care homes licensed under Chapter 131D of the General Statutes.
- (3) Home care agencies licensed under Chapter 131E of the General Statutes.
- (4) Providers licensed under Chapter 122C of the General Statutes, including a contract agency of a provider that is subject to the provisions of Article 4 of that Chapter.

The criminal history shall be provided to nursing homes and home care agencies in accordance with G.S. 131E-265, to adult care homes in accordance with G.S. 131D-40, and to a provider in accordance with G.S. 122C-80. The requesting entity shall provide to the Department of Public Safety, along with the request, the fingerprints of the individual to be checked if a national criminal history record check is required, any additional information required by the Department of Public Safety, and a form signed by the individual to be checked 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 of Criminal Histories. If a national criminal history record check is required, the fingerprints of the individual 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. All information received by the entity shall be kept confidential in accordance with G.S. 131E-265, 131D-40, and 122C-80, as applicable. The Department of Public Safety shall charge a reasonable fee for conducting the checks authorized by this section. The fee for the State check may not exceed fourteen dollars (\$14.00). (2000-154, s. 1; 2003-214, s. 1(2); 2005-4, s. 5(b); 2014-100, ss. 17.1(m), (o).)

Article 5.

Miscellaneous Provisions.

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

(a) Requirement; Adult Care Home. – 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. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State 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. Within five business days of making the conditional offer of employment, an adult care home shall submit a request to the Department of Public Safety under G.S. 143B-939 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 143B-939, the Department of Public Safety shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the adult care home as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the adult care home. Adult care homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Adult Care Home. – An offer of employment by a contract agency of 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 upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of an adult care home shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of an adult care home shall submit a request to the Department of Public Safety under G.S. 143B-939 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 143B-939, the Department of Public Safety shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the contract agency of the adult care home as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the adult care home. Contract agencies of adult care

homes shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the adult care home or a contract agency of the adult care home 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 adult care home or the contract agency of the adult care home. If the adult care home or a contract agency of the adult care home disqualifies an applicant after consideration of the relevant factors, then the adult care home or the contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(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 county, state, or federal criminal history of conviction or pending indictment of a 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 7B, Rape and Other Sex Offenses; Article 8, Assaults; Article 10, Kidnapping and Abduction; Article 13, Malicious Injury or Damage by Use of Explosive or Incendiary Device or Material; Article 14, Burglary and Other Housebreakings; Article 15, Arson and Other Burnings; Article 16, Larceny; Article 17, Robbery; Article 18, Embezzlement; Article 19, False Pretenses and Cheats; Article 19A, Obtaining Property or Services by False or Fraudulent Use of Credit Device or Other Means; Article 19B, Financial Transaction Card Crime Act; Article 20, Frauds; Article 21, Forgery; Article 26, Offenses against Public Morality and Decency; Article 26A, Adult Establishments; Article 27, Prostitution; Article 28, Perjury; Article 29, Bribery; Article 31, Misconduct in Public Office; Article 35, Offenses Against the Public Peace; Article 36A, Riots, Civil Disorders, and Emergencies; Article 39, Protection of Minors; Article 40, Protection of the Family; Article 59, Public Intoxication; and Article 60, Computer-Related Crime. 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.

(e) Penalty for Furnishing False Information. – Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application
G.S. 131D-40

that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. – An adult care home may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

- (1) The adult care home shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 143B-939.
- (2) The adult care home shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. – An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(h) For purposes of this section, the term "private entity" means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency. (1995 (Reg. Sess., 1996), c. 606, s. 2; 1997-125, s. 1; 2000-154, ss. 2.(a), (b); 2004-124, ss. 10.19D(b), (g); 2005-4, ss. 6, 7; 2007-444, s. 3.1; 2012-12, s. 2(uu); 2014-100, s. 17.1(ggg); 2015-181, s. 47.)

Article 16.

Miscellaneous Provisions.

§ 131E-265. Criminal history record checks required for certain applicants for employment.

(a) Requirement; Nursing Home or Home Care Agency. – An offer of employment by a nursing 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. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. An offer of employment by a home care agency licensed under this Chapter to an applicant to fill a position that requires entering the patient's home is conditioned on consent to a criminal history record check of the applicant. In addition, employment status change of a current employee of a home care agency licensed under this Chapter from a position that does not require entering the patient's home to a position that requires entering the patient's home shall be conditioned on consent to a criminal history record check of that current employee. If the applicant for employment or if the current employee who is changing employment status has been a resident of this State for less than five years, then the offer of employment or change in employment status is conditioned on consent to a State and national criminal history record check. The national criminal history record check shall include a check of the applicant's or current employee's fingerprints. If the applicant or current employee has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant or current employee applying for a change in employment status. 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. In addition, a home care agency shall not change a current employee's employment status from a position that does not require entering the patient's home to a position that requires entering the patient's home who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a nursing home or home care agency shall submit a request to the Department of Public Safety under G.S. 143B-939 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 143B-939, the Department of Public Safety shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the nursing home or home care agency as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the nursing home or home care agency. Nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the home or agency is confidential and may not be disclosed, except to the applicant as provided in subsection (b) of this section.

(a1) Requirement; Contract Agency of Nursing Home or Home Care Agency. – An offer of employment by a contract agency of a nursing home or 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 upon consent to a criminal history record check of the applicant. If the applicant has been a resident of this State for less than five years, then the offer of employment is conditioned on consent to a State and national criminal history record check of the applicant. The national criminal history record check shall include a check of the applicant's fingerprints. If the applicant has been a resident of this State for five years or more, then the offer is conditioned on consent to a State criminal history record check of the applicant. A contract agency of a nursing home or home care agency shall not employ an applicant who refuses to consent to a criminal history record check required by this section. Within five business days of making the conditional offer of employment, a contract agency of a nursing home or home care agency shall submit a request to the Department of Public Safety under G.S. 143B-939 to conduct a State or national criminal history record check required by this section, or shall submit a request to a private entity to conduct a State criminal history record check required by this section. Notwithstanding G.S. 143B-939, the Department of Public Safety shall return the results of national criminal history record checks for employment positions not covered by Public Law 105-277 to the Department of Health and Human Services, Criminal Records Check Unit. Within five business days of receipt of the national criminal history of the person, the Department of Health and Human Services, Criminal Records Check Unit, shall notify the contract agency of the nursing home or home care agency as to whether the information received may affect the employability of the applicant. In no case shall the results of the national criminal history record check be shared with the contract agency of the nursing home or home care agency. Contract agencies of nursing homes and home care agencies shall make available upon request verification that a criminal history check has been completed on any staff covered by this section. All criminal history information received by the contract agency is confidential and may not be disclosed, except to the applicant as provided by subsection (b) of this section.

(b) Action. – If an applicant's criminal history record check reveals one or more convictions of a relevant offense, the nursing home or home care agency, or the contract agency of a nursing home or home care agency, 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 nursing home or home care agency, or the contract agency of the nursing home or home care agency. If a nursing home, home care agency, or contract agency of a nursing home or home care agency disqualifies an applicant after consideration of the relevant factors, then the nursing home, home care agency, or contract agency may disclose information contained in the criminal history record check that is relevant to the disqualification, but may not provide a copy of the criminal history record check to the applicant.

(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.

(e) Penalty for Furnishing False Information. – Any applicant for employment who willfully furnishes, supplies, or otherwise gives false information on an employment application that is the basis for a criminal history record check under this section shall be guilty of a Class A1 misdemeanor.

(f) Conditional Employment. – A nursing home or home care agency may employ an applicant conditionally prior to obtaining the results of a criminal history record check regarding the applicant if both of the following requirements are met:

- (1) The nursing home or home care agency shall not employ an applicant prior to obtaining the applicant's consent for a criminal history record check as required in subsection (a) of this section or the completed fingerprint cards as required in G.S. 143B-939.
- (2) The nursing home or home care agency shall submit the request for a criminal history record check not later than five business days after the individual begins conditional employment.

(g) Immunity From Liability. – An entity and officers and employees of an entity shall be immune from civil liability for failure to check an employee's history of criminal offenses if the employee's criminal history record check is requested and received in compliance with this section.

(h) For purposes of this section, the term "private entity" means a business regularly engaged in conducting criminal history record checks utilizing public records obtained from a State agency. (1995 (Reg. Sess., 1996), c. 606, s. 3; 1997-125, s. 2; 1997-140, s. 4; 2000-154, ss. 3(a),(b); 2004-124, s. 10.19D(a); 2005-4, ss. 8, 9; 2007-444, s. 3.2; 2014-100, s. 17.1(iii).)