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SHERIFF OF ERIE COUNTY

TO ALL FIRE CHIEFS IN ERIE COUNTY:

New York State Executive Law §837 (effective April 1, 2000) requires that applicants for membership to volunteer fire departments undergo a non-fingerprint criminal history check against the State's criminal history files maintained by the Division of Criminal Justice Services (DCJS) to determine if they stand convicted of the crime of arson in New York State.

Effective December 2, 2014, this law was updated to include convictions which require registration as a sex offender only.

The Erie County Sheriff's Office provides this service, at no charge, to local fire departments as required by law. Arson and sex offender registration checks conducted by local law enforcement agencies are not valid.

This law applies to new applicants (prospective volunteer firefighters), current volunteers seeking membership in another fire company (transfers), and reinstatements to membership.

Fire chiefs are encouraged to obtain parental permission before conducting any background investigations on minors.

Fire company officials should complete sections A and B, as well as fields 1 through 10 of the attached *DCJS -VFF Volunteer Firefighter Inquiry Form*, and should use the applicant/transferee driver's license and another form of identification (such as a birth certificate, passport or social security card) when completing the forms.

Forms can be downloaded and completed from the "Forms and Resources" page of Fire Safety web site at: www.erie.gov/fire. It is available as a "fillable" form in Adobe Acrobat format which allows you to type the information from your PC keyboard directly on to the form and then print it. It's imperative that the forms be typed or completed legibly by hand or they will be rejected, further delaying the processing. The fire chief can then sign the form and fax, mail or hand-deliver it to the Erie County Sheriff's Office – Attention: Fire Investigation Unit. ***Email transmission is not permissible.***

The normal turn-around time for completed arson background checks is five (5) business days or less. The results will be mailed to the fire chief. Please allow for this lead time.

Please do not hesitate to contact Sheriff's Captain Ron Kenyon at 858-3945 or Deputy Fire Coordinator Tiger Schmittendorf in the Fire Safety Office at 681-7111 should you have any questions or require further information.

Fax, mail or hand-deliver (only) signed and completed DCJS-VFF Forms to:

Erie County Sheriff's Office
ATTN: Fire Investigation Unit
One Sheriffs Drive
Orchard Park NY 14127

Office Phone: 667-5200
Fax: 662-8477
E-Mail: fireinvestigation@erie.gov
(Follow-up only - Form cannot be emailed)



Volunteer Fire Companies Will Soon Be Required to Screen Applicants for Prior Sex Offenses

- [FASNYArticles](#)
- Volunteer Fire Companies Will...
By Anita L. Pelletier, Esq., Michael J. Cooney, Esq. and Brian W. Mahoney, Esq.

Local volunteer fire companies and the men and women who serve enjoy a special position of trust within our communities. Firefighters are called upon to serve some of the most vulnerable members of our communities, and their exemplary performance is essential to building this relationship of trust. To ensure the highest quality of community service and moral character, fire companies are careful and selective about who they admit as volunteer firefighters.

New York Senate Bill S1885C-2013, which was signed into law by Governor Cuomo on August 4, 2014 (the “Act”), reinforces the importance of this community trust by requiring that all fire companies screen new applicants and transfer firefighters for previous sex offenses before accepting the applicant or transfer as a member. The Act does not prohibit fire companies from admitting persons with prior sex offenses, nor does the Act require fire companies to screen or remove any current members. Rather, the Act requires that fire companies inform themselves of any applicant’s prior sex offenses and carefully consider the community impact of admitting such individuals as volunteer firefighters.

The new law takes effect December 2, 2014.

The Screening and Admission Process

Before being signed into law, the Act went through several revisions in the legislature. Prior versions of the Act, which were not signed into law, would have created an absolute prohibition on persons with prior sex offenses from serving as volunteer firefighters, similar to the arson conviction prohibition.

The final version of the Act, however, takes a more flexible approach—one that provides fire companies with flexibility to make the right decisions for their communities.

The Act requires that fire companies submit a request for a background check on an applicant to either the local Sheriff's Department or the Office of Fire Prevention and Control in the same manner that they currently request a background check for arson-related offenses. The Sheriff's Department or Office of Fire Prevention and Control is required to respond within ten (10) days. The response will simply indicate whether the applicant does or does not have a prior sex offense. If the applicant has a prior sex offense conviction, the fire company must conduct additional inquiry.

It is important to note that, unlike prior arson offenses, a fire company cannot automatically refuse to admit someone with a prior sex offense conviction based on that fact alone. Rather, the Act requires fire companies to consider other factors as well as the conviction, with admission only being denied if the prior sex offense conviction creates an unreasonable risk to the safety and welfare of the general public. Specifically, a fire company must consider all of the following factors before deciding whether to admit an applicant who committed a sex offense:

- New York's public policy of the state to "encourage employment of persons with criminal records" as expressed in Corrections Law Sections 752 and 753;
- the specific duties of the applicant and the impact the criminal offense may have on his or her abilities to perform those duties;
- how long ago the offense occurred and how old the applicant was when the offense occurred; and
- the fire company's legitimate interest in protecting the safety and welfare of specific individuals or the general public.

Before reaching a conclusion regarding whether to admit the applicant, a fire company must go review, consider and weigh the factors listed above. Only after such consideration may the fire company determine whether the applicant's prior sex offense conviction threatens a fire company's ability to safely serve the public.

The fire company should document the information it reviewed and considered as well as document its decision in writing, including the rationale for its ultimate decision. Courts are generally deferential and will not second guess a decision as long as the prescribed process is followed and adequately documented.

If the fire company ultimately determines that it is in the community's best interests to deny admission to the applicant, the fire company must inform the applicant about the fire company's decision. The notice must include information advising the applicant, in writing, of the applicant's right to challenge the decision in court. The fire company must also provide a copy of Corrections Law Sections 752 and 753, which set forth the criteria used to make the decision.

Lastly, if the applicant requests, the fire company must provide a written explanation describing the reasons the applicant was denied admission. When providing this information, the fire company should refer to the criteria set forth in the Corrections Law (and described above)—it is not enough simply to refer to the applicant’s prior sex offense.

Removal of a Member

As discussed above, the law does not require fire companies to screen current members for prior sex offenses. Fire companies may screen current members for prior sex offenses if they desire to do so. However, before a decision to screen current members is made, the fire company should consider discussing the issue with its members to ensure that there is general agreement to conduct such screening.

Because the Act does not provide any new grounds for removal of any current member, members of fire companies may only be removed: (a) by the municipal body with oversight of the fire department of the town, village, city or fire district (removal can only be done for reasons of incompetence or misconduct); or (b) by the individual fire company for failure to comply with the constitution, by-laws or code of conduct of the fire company.

Regardless of whether a member is removed by the members or Board of Directors of the fire company in accordance with their bylaws or the municipal body (if any) that has authority over the fire companies within its district, the substantive decision (whether or not to remove the member) should be made according to the same criteria to review a new or transfer applicant described above.

If a municipal body is available to review the removal of a member based on that member’s prior sex offenses, fire companies are advised to pursue that approach, rather than handling the removal entirely “in house.” Engaging the municipal board imbues the removal with a public process, which may eliminate doubt as to the fairness or impartiality of the removal decision. In addition, some courts have taken the view that removal of a member of a fire company for prior criminal convictions is a matter of public interest that should always be resolved by a municipal body when available. Using municipal review as first resort may reduce the likelihood of a successful legal challenge by the member subject to the proposed removal and reduce the cost of defending such a challenge.

If a municipal body is not available to oversee the removal (e.g., fire company is not subject to any municipal body), then the members or the governing board of the fire company must refer to the bylaws to determine how to remove the member. Fire companies need to take care to follow the requirements of the bylaws strictly. If a removed member challenges removal, the challenge would be with respect to the procedures the fire company used to make its decision. Failure to follow its stated procedures could result in a court ordering the fire company to go through the entire review process again.

Non-Fingerprint Background Checks – Volunteer Firefighters

Effective December 2, 2014, Executive Law §837-o requires prospective volunteer firefighters, and current volunteers seeking membership in another fire company, to undergo non-fingerprint criminal history background checks, **for arson convictions and convictions which require registration as a sex offender only**, against the State's criminal history files maintained by the Division of Criminal Justice Services (DCJS). The law prohibits a fee from being charged in connection with these background checks. The law also specifies that these checks will be conducted by sheriffs' offices unless a county legislature enacts a local law prohibiting its county sheriff from having such responsibility. In such a case, the NYS Division of Homeland Security and Emergency Services, Office of Fire Prevention and Control (OFPC) is authorized to perform the background checks for the affected volunteer fire companies.

DCJS supplies the *DCJS-VFF Volunteer Firefighter Inquiry Form* to each sheriff's office in the State and to OFPC. Sheriffs' offices and OFPC shall distribute the form to volunteer fire companies seeking to perform arson and registerable sex offense background checks on prospective volunteers and fire company transferees. Fire company officials should complete sections A and B and fields 1 through 10 of the *DCJS –VFF Volunteer Firefighter Inquiry Form*. Fire company officials should use the applicant/transferee driver's license, and another form of identification, such as a birth certificate, passport or social security card, when completing the forms. **Completed forms must be returned to the sheriff's office, or to OFPC where applicable, via U.S. mail, fax or hand delivery. E-mail transmission is not permissible.** It is not an option to perform the background checks through OFPC in counties where there is no local law prohibiting the sheriff's office from conducting the checks.

Upon receiving a completed *DCJS-VFF Volunteer Firefighter Inquiry Form*, the sheriff's office will perform a name search on each applicant/transferee using the Criminal Repository Search link located under the People tab in the eJusticeNY Integrated Justice Portal using the VFF Reason Code. If a name search candidate is returned as an exact match to the input data, the sheriff's office will use the Criminal Repository Inquiry link to obtain the candidate's rapsheet from DCJS. The sheriff's office should examine the rapsheet to determine the presence of an arson and/or registerable sex offense conviction. As you may know, not all sex offense convictions require registration as a sex offender. If the name search returns no candidate, the sheriff's office should perform a separate Sex Offender Registry search using the Full Registry Search link located under the People tab in the eJusticeNY Integrated Justice Portal. The appropriate box should be checked on the bottom portion of the *DCJS-VFF Volunteer Firefighter Inquiry Form* and the form returned to the submitting fire company via U.S. mail, fax or hand delivery. In cases where the rapsheet shows an arrest for arson and/or registerable sex offense, but does not reflect a final disposition for the arrest, the sheriff's office should contact the DCJS Office of Criminal Justice Operations at (518) 457-8547 for assistance in obtaining the final disposition. If an arson and/or registerable sex offense case is pending adjudication, the requesting fire company should be informed that a decision regarding the applicant/transferee must be delayed. **Criminal history records (i.e., rapsheets) are not to be provided to fire companies under any circumstance.**

In cases where a background check results in the return of an arson and/or registerable sex offense conviction against an applicant/transferee and the individual disputes the conviction, the fire company official should immediately refer the individual to DCJS for a personal record review. If the personal record review results in the determination that the individual's record does not contain an arson conviction and/or registerable sex offense conviction, a subsequent notification will be sent to the sheriff's office, which should forward the appropriate notification to the fire company. It should be noted that while an applicant/transferee who has been convicted of arson is not eligible to be elected or appointed as a volunteer member of a fire company, a registered sex offender is not automatically disqualified from membership. If the background check reveals that the applicant/transferee is a registered sex offender, the fire company must make a determination of eligibility in accordance with the criteria established in Correction Law §§752 and 753. The fire company should be directed to contact the Sex Offender Registry at 1-800-262-3257 (option 2) to obtain more information about the conviction.



NEW YORK STATE DIVISION OF CRIMINAL JUSTICE SERVICES
Office of Criminal Justice Operations
Volunteer Firefighter Inquiry Form

INSTRUCTIONS: This form is to be used only by a Sheriff's Office (or OFPC, where applicable) when performing searches authorized under NY Executive Law §837-o in connection with individuals seeking membership in a Volunteer Fire Department.

A. DATE:

This form must be U.S. mailed, faxed or hand delivered between agencies. E-mail transmission is not permissible.

Shaded boxes are required data elements.

B. REQUESTING VOLUNTEER FIRE DEPARTMENT

DEPARTMENT NAME:

FIRE CHIEF NAME:

SIGNATURE:

ADDRESS:

TELEPHONE NUMBER:

FAX NUMBER:

1. NAME (LAST, FIRST, MIDDLE)

2. ADDRESS (Street, City, Zip Code)

3. ALIAS AND/OR MAIDEN NAME

4. SEX

M F

5. RACIAL APPEARANCE

White Black Indian Asian Unknown Other

6. ETHNICITY

Hispanic Not Hispanic Unknown

7. HEIGHT
 Ft. In.

8. DATE OF BIRTH
 Month Day Year

9. PLACE OF BIRTH

10. SOCIAL SECURITY NO.

INVESTIGATING OFFICER: _____ DATE _____
 (PRINT NAME/TITLE)

INVESTIGATING OFFICER SIGNATURE _____

RESULTS OF INQUIRY

- NO RECORD OF AN ARSON CONVICTION OR A CONVICTION REQUIRING REGISTRATION AS A SEX OFFENDER
- CONVICTED OF ARSON; NO RECORD OF A CONVICTION REQUIRING REGISTRATION AS A SEX OFFENDER
- CONVICTED OF A CRIME REQUIRING REGISTRATION AS A SEX OFFENDER; NO RECORD OF AN ARSON CONVICTION
- CONVICTED OF ARSON AND CONVICTED OF A CRIME REQUIRING REGISTRATION AS A SEX OFFENDER