

17.5 Effect of Expunction

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17.5 Effect of Expunction

A. Generally

Expunction allows the person who was the subject of the expunged juvenile proceeding to go forward as if the proceeding had never occurred. G.S. 7B-3201(a) provides that the person and the person's parents may not be held guilty of perjury or of giving a false statement "by reason of the person's failure to recite or acknowledge such record or response to any inquiry made of the person for any purpose." An exception is that in a delinquency proceeding, a juvenile "defendant" who chooses to testify or a juvenile witness may be ordered to testify regarding past adjudications regardless of expunction. G.S. 7B-3201(b); *In re S.S.T.*, 165 N.C. App. 533, 534–35 (2004).

B. School Records

When a petition is filed alleging that the juvenile committed a felony, the juvenile court counselor must provide written notification to the principal of the juvenile's school. G.S. 7B-3101(a). If a court later grants the juvenile's petition for expunction, the principal must "shred, burn, or otherwise destroy" any documents the school received involving the petition. G.S. 115C-404(a).

C. Fingerprint and Photograph Exception

Fingerprints and photographs taken after the juvenile is taken into custody are not eligible for expunction. G.S. 7B-2102(d). They must be destroyed, however, if a juvenile petition is not filed within one year of the fingerprinting and photographing, the court does not find probable cause, or the juvenile is not adjudicated delinquent of any offense that would be a felony or misdemeanor if committed by an adult. G.S. 7B-2102(e); *see supra* "Destruction of fingerprints and photographs" in § 2.8E, Nontestimonial Identification Records. Counsel should file a motion to destroy the juvenile's fingerprints and photographs if any one of the criteria in G.S. 7B-2102(e) are met. Although there is no provision in G.S. 7B-2101 permitting officers to take fingerprints and photographs of a juvenile facing a divertible offense, it is possible that officers might do so anyway. If officers take fingerprints and photographs under these circumstances, counsel should file a motion to destroy the fingerprints and photographs on the ground that they are not permitted under G.S. 7B-2102.

D. Adult Criminal Proceedings

Expunction of juvenile delinquency records may affect decisions involving pretrial release, plea agreements, and probation if the juvenile is involved in later adult criminal proceedings. If the defendant in a criminal proceeding involving a Class A1 misdemeanor or a felony was less than 21 years of age at the time of the offense, the juvenile's record of an adjudication of delinquency for a Class A1 misdemeanor or a felony that occurred after the defendant reached 13 years of age may be used by law enforcement officers, magistrates, courts, and prosecutors for pretrial release, plea negotiation decisions, and plea acceptance decisions. G.S. 7B-3000(e). In addition, G.S. 7B-3000(e1) permits a probation officer assigned to supervise an adult defendant sentenced to probation for an offense committed while the person was less than 25 years of age to examine the defendant's juvenile records involving cases in which the defendant was adjudicated delinquent for felonies. If the juvenile successfully expunges his or her juvenile court records, the records should not adversely affect the juvenile in these matters.

E. Impact on Expunctions in Adult Court

Juvenile expunctions should not be a bar to receiving an adult expunction because the adult expunction statutes do not make a prior expunction of a delinquency matter a bar. As a practical matter, however, they might affect a court's consideration of a petition for expunction in adult court. Under G.S. 7B-3200(i), the clerk of superior court is required to file with the AOC the names of people who are granted expunctions under the Juvenile Code. Apparently, when a person requests an expunction of an adult matter, the AOC reports all prior expunctions, including expunctions of delinquency matters, to the court. A court might take this information into account even though the adult expunction statutes do not make a juvenile expunction a consideration.

Two adult expunction statutes state generally that a prior expunction is a bar. Thus, a court is authorized to grant an expunction of a nonviolent felony conviction based on an offense committed before the defendant was 18 if, among other things, a "search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction." G.S. 15A-145.4(e)(7). Similar language appears in G.S. 15A-145.6 for expunction of convictions for prostitution. Although this general language might suggest that a juvenile expunction could prevent a court from granting these types of expunction in adult court, it seems unlikely that the General Assembly intended this result. When a court reviews a petition for expunction under G.S. 15A-145.4, it *may* consider "the petitioner's juvenile record." The statute does not prohibit the court from granting an expunction if the petitioner has a juvenile record. It would seem contradictory if the statute permitted a court to grant an expunction to an adult with a juvenile record while barring an expunction for an adult who no longer had a juvenile record. *See State v. Barksdale*, 181 N.C. 621, 625 (1921) ("[W]here a literal interpretation of the language of a statute will lead to absurd results or contravene the manifest purpose of the Legislature, as otherwise expressed, the reason and purpose of the law shall control and the strict letter thereof shall be disregarded.").

In light of the above, counsel should discuss with the juvenile the potential impact of a juvenile expunction on future expunctions in adult court.

F. Other Consequences

Although access to juvenile delinquency records are limited under G.S. 7B-3000 and 7B-3001, requests regarding juvenile delinquency records are not uncommon and may affect the juvenile's educational, housing, and employment opportunities. See Riya Saha Shah & Jean Strout, [*Future Interrupted: The Collateral Damage Caused by Proliferation of Juvenile Records*](#) (Feb. 2016) (providing an overview of how juvenile court records are disclosed through background checks), and Juvenile Law Center, [*New Study Reveals Majority of U.S. States Fail to Protect Juvenile Records*](#), Pursuing Justice (Nov. 13, 2014). Counsel should advise the juvenile that expunging juvenile court records could help the juvenile avoid adverse consequences that might result from disclosure of the records.