

Chapter 17

Expunction of Juvenile Records

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17.1 Expunction

Expunction is a statutory process that allows a former juvenile respondent to file a petition to have the court records of the juvenile proceeding, as well as any law enforcement records and records maintained by the Division of Adult Correction and Juvenile Justice, destroyed. After expunction of juvenile records, the former juvenile respondent may generally proceed as if the juvenile proceeding never occurred. This will protect the former juvenile respondent from certain collateral consequences, as well as

prevent an adjudication from being used in certain criminal proceedings. *See infra* § 17.5, Effect of Expunction.

Statutory criteria must be met; not all adjudications or records can be expunged. This chapter discusses the requirements and procedures for expunction of juvenile court records relating to a dismissed petition alleging delinquency or to an adjudication of delinquency. Procedures for expunction of records relating to cases involving undisciplined juveniles are not included in this discussion.

The former respondent in a juvenile delinquency proceeding will ordinarily become eligible for expunction of records after the involvement of appointed counsel has ended. Counsel should provide information to a juvenile client who may be eligible to have records expunged so that the client can pursue expunction independently or through hired counsel at the appropriate time. For a “reminder card” that you can provide your juvenile client and other information on expunctions of juvenile court records, see the [Expunction Toolkit](#), a collection of materials on juvenile court expunctions prepared by the Office of the Juvenile Defender. *See also* [Expunction of Delinquency Matters](#) in John Rubin, *Relief from a Criminal Conviction: A Digital Guide to Expunctions, Certificates of Relief, and Other Procedures in North Carolina* (UNC School of Government 2016).

17.2 Expunction of Juvenile Court Records: Adjudication of Delinquency

A. Criteria

Age. A person must be at least 18 years of age to file a petition for expunction of juvenile court records relating to an adjudication of delinquency. G.S. 7B-3200(a).

Adjudications that may be expunged. An adjudication for an offense other than one that would have been a Class A, B1, B2, C, D, or E felony if committed by an adult is eligible for expunction. G.S. 7B-3200(b)(1). The excluded offenses cannot be expunged.

When to file. A petition for expunction of an eligible adjudication can be filed if at least 18 months have elapsed since the person was released from juvenile court jurisdiction and the person has not subsequently been adjudicated delinquent or convicted of any felony or misdemeanor other than a “traffic violation,” a term that is not defined. G.S. 7B-3200(b)(2); *see also* [Frequently Asked Questions about Expunctions and Other Relief](#) (discussing meaning of traffic violations in adult context) in *Relief from a Criminal Conviction: A Digital Guide to Expunctions, Certificates of Relief, and Other Procedures in North Carolina* (UNC School of Government 2016).

B. Petition

The petition for expunction must be filed in the court where the person was adjudicated delinquent. G.S. 7B-3200(b). Pursuant to G.S. 7B-3200(c), a petition must contain the following:

- an affidavit by the petitioner stating that the petitioner has been of good behavior since the adjudication and has not subsequently been adjudicated delinquent or convicted of any felony or misdemeanor other than a traffic violation,
- verified affidavits of two people not related to the petitioner or to each other by blood or marriage stating that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good, and
- a statement that the petition is a motion in the cause in the case in which the petitioner was adjudicated delinquent.

See [Form AOC-J-903M](#) (Petition and Motion in the Cause for Expunction of Juvenile Record) (Mar. 2002), and [Form AOC-J-904M](#) (Affidavit of Good Character (Expunction of Juvenile Record)) (Mar. 2002). The Administrative Office of the Courts (AOC) forms do not specifically include requests and orders for the Division of Adult Correction and Juvenile Justice to destroy its records, including those maintained on the North Carolina Juvenile Online Information Network (NC-JOIN); for the juvenile court counselors to destroy their records; or for the AOC to destroy its records, including those maintained on JWisE, the automated information management system for juvenile courts. These requests must be added to the forms, or counsel must draft an appropriate petition and order. A sample "Petition and Order to Expunge Juvenile Record" is available on the [Office of the Juvenile Defender website](#).

C. Service of Petition and Notice

The petitioner must serve the petition on the prosecutor in the district where the adjudication occurred. Notice of the date of the hearing must be given to the prosecutor. G.S. 7B-3200(c). The statute does not state who must give notice of the hearing, but it appears that the clerk sends notice of the hearing date to the petitioner and to the prosecutor.

D. Objection by Prosecutor

Within 10 days of receipt of the petition, the prosecutor may file an objection. G.S. 7B-3200(c). The prosecutor is presumably allowed to present evidence and argue against granting the petition at the hearing although this is not specified by statute.

E. Hearing

A hearing must be held at which the court will consider whether the petitioner has met the criteria for expunction, listed *supra* § 17.2A, Criteria. The statute provides no procedures for conducting the hearing.

F. Order

If the court finds that the petitioner has met the criteria for expunction, it must enter an order directing the clerk of superior court and all law enforcement agencies to expunge records concerning the adjudication. The clerk must forward a certified copy of the order to the sheriff, chief of police, or other law enforcement agency. G.S. 7B-3200(e). Records that must be expunged include all records containing references to arrests, complaints, referrals, petitions, and orders. G.S. 7B-3200(d); *see* [Form AOC-J-905](#) (Order for Expunction of Juvenile Record) (Oct. 2016). Because the AOC form order does not identify all the necessary agencies that have juvenile records, these should be added or a separate order drafted. *See supra* § 17.2B, Petition.

17.3 Expunction of Juvenile Court Records: Dismissed Petition

A. Criteria

A person who is at least 16 years of age may file a petition for expunction of juvenile court records relating to a petition alleging delinquency that was dismissed without an adjudication of delinquency. G.S. 7B-3200(h). It appears that records of a dismissed petition may be expunged even if the person has other adjudications of delinquency or criminal convictions.

B. Petition

The petition must be filed in the court in which the person was alleged to be delinquent. G.S. 7B-3200(h). There are no provisions in the statute specifying what the petition must allege. It appears that the petition need allege only that a petition alleging delinquency was filed, that it was dismissed, and that the petitioner is at least 16 years of age. *See* [Form AOC-J-909M](#) (Petition/Order/Notice Expunction of Juvenile Records upon Dismissal) (Mar. 2002).

C. Service of Petition and Notice

A petition for expunction of juvenile court records regarding a dismissed petition must be served on the chief juvenile court counselor in the district where the petition was filed. If the chief court counselor files an objection to the petition, a hearing must be scheduled and notice given to the chief court counselor. G.S. 7B-3200(h).

D. Objection by Chief Court Counselor

The chief court counselor has 10 days from receipt of service of the petition to file an objection. If an objection is filed, the court must hold a hearing on the petition. G.S. 7B-3200(h). It appears that the only ground for filing an objection is if the petition was not, in fact, dismissed.

E. Hearing

A hearing must be held if the chief court counselor files an objection or if the court directs that a hearing be held. The court must consider whether the criteria discussed *supra* in § 17.2A, Criteria, have been met. G.S. 7B-3200(h). The statute provides no procedures for conducting the hearing.

If no objection to the petition is filed, the court has discretion to grant the petition without holding a hearing. *Id.*

F. Order

If the court finds that the petitioner has met the criteria for expunction, it must enter an order directing the clerk and all law enforcement agencies to expunge their records concerning the dismissed petition. Records that must be expunged include all records containing references to arrests, complaints, referrals, juvenile petitions, and orders. G.S. 7B-3200(h); see [Form AOC-J-905](#) (Order for Expunction of Juvenile Record) (Oct. 2016); see also *supra* § 17.2B, Petition (discussing other records that counsel should request be expunged).

The clerk must forward a certified copy of the order to the sheriff, chief of police, or other appropriate law enforcement agency and to the chief court counselor. These officials must immediately destroy all records relating to the allegations that the juvenile was delinquent. G.S. 7B-3200(h).

17.4 Notice of Expunction Procedures and Expunction

When a court enters disposition in a juvenile delinquency case, it must provide the juvenile with information either orally in court or in writing on the procedures under G.S. 7B-3200 for expunging juvenile records. G.S. 7B-2512(b). Based on G.S. 7B-2512(b), the AOC forms for Level 1 and Level 2 dispositions now contain boxes prompting courts to inform juveniles of expunction procedures. See [Form AOC-J-461](#) (Juvenile Level 1 Disposition Order) (Oct. 2016); [Form AOC-J-475](#) (Juvenile Level 2 Disposition Order) (Oct. 2016).

After the court enters an order granting expunction of the juvenile's records and the records have been expunged, the clerk must send written notice to the petitioner at the petitioner's last known address that the juvenile record has been expunged. Pursuant to G.S. 7B-3202, the notice must inform the petitioner that with respect to the matter in the record, the petitioner: may not be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of the juvenile's failure to recite or acknowledge such record or response to any inquiry made of the juvenile for any purpose except that upon testifying in a delinquency proceeding, the juvenile may be required by a court to disclose that the juvenile was adjudicated delinquent. See [Form AOC-J-906M](#) (Notice of Expunction of Juvenile Record) (Mar. 2002).

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.