

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 destroyed. After expunction of juvenile records, the former juvenile respondent may generally proceed as if the juvenile proceeding never occurred. This will benefit the former juvenile respondent when applying to college or for employment, 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 will discuss 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.

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 excepted 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).

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 had good behavior since the adjudication and that the person has not subsequently been adjudicated delinquent or convicted of any felony or misdemeanor other than a traffic violation,
- verified affidavits of two persons 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) (March 2002), at www.nccourts.org/Forms/Documents/548.pdf, and Form AOC-J-904M (Affidavit of Good Character (Expunction of Juvenile Record)) (March 2002), at www.nccourts.org/Forms/Documents/549.pdf. The AOC forms do not include requests and orders for the Department of Juvenile Justice to destroy its records, including those maintained on NC JOIN; for the juvenile court counselors to destroy their records; or for the North Carolina Administrative Office of the Courts to destroy its records, including those maintained on JWISSE. These requests must be added to the forms, or counsel must draft an appropriate petition and order. See *infra* Appendix 17-1 (Petition and Order to Expunge Juvenile Record).

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 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 to 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. 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. 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-905M (Order for Expunction of Juvenile Record) (March 2002), at www.nccourts.org/Forms/Documents/550.pdf. As noted above, the AOC form order does not include all the necessary agencies that have juvenile records, and these must be added or a separate order must be drafted. *See supra* § 17.2B (Petition).

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).

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) (March 2002), at www.nccourts.org/Forms/Documents/553.pdf.

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 in § 17.2A, *supra*, 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-905M (Order for Expunction of Juvenile Record) (March 2002), at www.nccourts.org/Forms/Documents/550.pdf; *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

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) (March 2002), at www.nccourts.org/Forms/Documents/551.pdf.

17.5 Effect of Expunction

Generally, expunction allows the person who was the subject of the expunged juvenile proceeding to go forward as if the proceeding had never occurred. The statute 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." G.S. 7B-3201(a). 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); see *In re S.S.T.*, 165 N.C. App. 533, 534–35 (2004) (language of G.S. 7B-3201 applies to all delinquency proceedings whether or not records expunged; juvenile may be questioned as to prior adjudications of delinquency when testifying in own defense in a juvenile delinquency adjudicatory hearing).

Fingerprints and photographs taken pursuant to G.S. 7B-2102 (Fingerprinting and photographing juveniles) are not eligible for expunction under that statute. G.S. 7B-2102(d). They must be destroyed, however, if one of the criteria of the statute is met: a petition is not filed within one year of the fingerprinting and photographing; the court does not find probable cause pursuant to G.S. 7B-2202; 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* § 2.7E (Destruction of fingerprints and photographs).

Appendix 17-1

Petition and Order to Expunge Juvenile Record

STATE OF NORTH CAROLINA
 [] COUNTY

IN THE GENERAL COURT OF JUSTICE
 DISTRICT COURT DIVISION
 FILE NO. []

STATE OF NORTH CAROLINA
 v.
 [JS, A JUVENILE]

)
)
) PETITION AND ORDER TO EXPUNGE
) JUVENILE RECORD
)

NOW COMES the Petitioner, by and through his attorney, and requests this Honorable Court, pursuant to N.C. Gen. Stat. § 7B-3200, to issue an order directing the Clerk of Court of [] County, North Carolina, and all law enforcement agencies to expunge their records of the adjudication, including any references to arrests, complaints, referrals, petitions, and orders in the above-captioned matter. The Petitioner requests a hearing on this petition.

In support thereof, the Petitioner states the following:

1. On [DATE], the Petitioner, a juvenile at the time, admitted to indecent liberties between children, a violation of N.C. Gen. Stat. § 14-202.2, punishable as a Class 1 misdemeanor.
2. The Petitioner had not previously been adjudicated delinquent of any felony or misdemeanor.
3. The Petitioner had not previously been placed on probation or previously received an expunction.
4. The Petitioner was placed on one year probation during which he completed 30 hours of community service and made formal apologies to the victim and the victim’s family members.
5. The Petitioner successfully completed probation on [DATE], at which time probation was terminated.
6. The Petitioner has now attained the age of [].
7. More than 18 months have elapsed since he was released from juvenile court jurisdiction.
8. The Petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor under the laws of the United States, or the laws of this State or any other state.

9. Attached to this motion are verified affidavits of [] and [], two persons unrelated to the Petitioner who know the character and reputation of the Petitioner in the community in which he lives. See Affidavits of [] and [], attached as Exhibits 1 and 2.
10. Based on the foregoing, the Petitioner requests that the Court issue an order directing the Clerk of Court of [] County and all law enforcement agencies to expunge their records of the adjudication, including any references to arrests, complaints, referrals, petitions, and orders in the above-captioned matter.

WHEREFORE, the Petitioner requests the Court to schedule a hearing on this matter. The district attorney shall have 10 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing on the petition.

Respectfully submitted this the [] day of [], [].

[ATTORNEY]
 [ADDRESS]
 [CITY, STATE, ZIP]
 [TELEPHONE]

Certificate of Service

I hereby certify that a copy of the foregoing motion was served on the District Attorney for the [NUMBER], Judicial District by deposit of said copy with [NAME], Assistant District Attorney.

This the [] day of [], [].

[ATTORNEY]

STATE OF NORTH CAROLINA
[] COUNTY

IN THE GENERAL COURT OF JUSTICE
DISTRICT COURT DIVISION
FILE NO. []

STATE OF NORTH CAROLINA

)
)
)
)
)

v.

EXPUNCTION ORDER

[JS, A JUVENILE]

THIS CAUSE coming on to be heard and being heard before the undersigned judge presiding, in the [] County District Court, the Court finds the following facts:

1. On [], the above-named Juvenile admitted to indecent liberties between children, a violation of N.C. Gen. Stat. § 14-202.2, punishable as a Class 1 misdemeanor.
2. The Petitioner had not previously been adjudicated delinquent of any felony or misdemeanor.
3. The Petitioner had not previously been placed on probation or previously received an expunction.
4. The Petitioner was placed on one year probation during which he completed 30 hours of community service and made formal apologies to the victim and the victim’s family members.
5. The Petitioner successfully completed probation on July 26, 2006, at which time probation was terminated.
6. The Petitioner has now attained the age of 18.
7. More than 18 months have elapsed since he was released from juvenile court jurisdiction.
8. The Petitioner has not subsequently been adjudicated delinquent or convicted as an adult of any felony or misdemeanor under the laws of the United States, or the laws of this State or any other state.

WHEREFORE, IT IS ORDERED, ADJUDGED AND DECREED, pursuant to N.C. Gen. Stat. § 7B-3200, that the Clerk of Court of [] County and all law enforcement agencies expunge their records of the adjudication, including any references to arrests, complaints, referrals, petitions, and orders in the above-captioned matter.

IT IS FURTHER ORDERED that the Clerk of Court of [] County send a copy of this expunction order to all public officials known to be a custodian of such entries,

including, but not limited to, the [] Police Department, the North Carolina State Bureau of Investigation, and the Federal Bureau of Investigation.

Respectfully submitted this the [] day of [], [].

[JUDGE]

District Court Judge