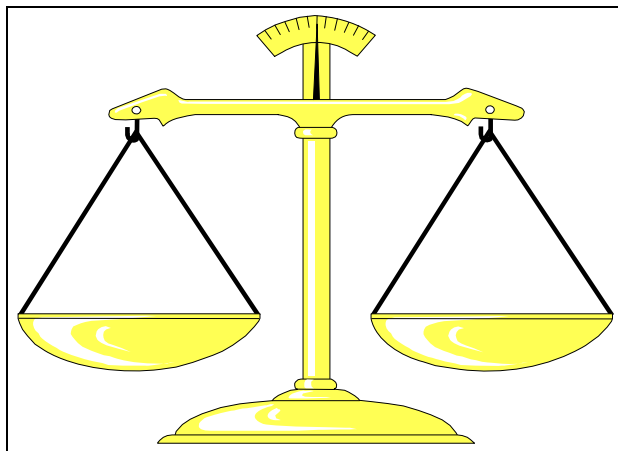


**NORTH CAROLINA  
SENTENCING  
AND  
POLICY ADVISORY  
COMMISSION**



***REPORT ON STUDY OF EXPUNCTION FOR NON-  
VIOLENT YOUTHFUL OFFENDERS***

**JANUARY 2009**

**THE HONORABLE W. ERWIN SPAINHOUR  
CHAIRMAN**

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EXECUTIVE DIRECTOR**



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**NORTH CAROLINA SENTENCING AND POLICY ADVISORY COMMISSION**  
**STUDY OF EXPUNCTION FOR NON-VIOLENT YOUTHFUL OFFENDERS**

**December 12, 2008**

**I. Introduction**

The North Carolina Sentencing and Policy Advisory Commission received a study request from Representatives Alice Bordsen ( District 63), Angela Bryant (District 7), and Larry Hall (District 29) at its September 12, 2008, meeting. The Representatives asked the Commission to do the following:

[S]tudy the issue of expunction for non-violent youthful offenders. Specifically, [we] would like the Commission to look at expunction for offenders under the age of eighteen who have been convicted of a non-violent felony and have no prior adult convictions. [We are] interested in whether the Commission believes such an option would have merit or not and, if so, under what conditions.

[We are] also interested in knowing how this option for expunction would relate to the matter of raising the age of juvenile jurisdiction to 18. (*See* Appendix A: July 21, 2008, Letter from Representatives Bordsen, Bryant, and Hall.)

At the meeting, members of the Sentencing Commission also identified some related issues that they wanted to have considered. The issues included combining the various expunction statutes into a single statute, expanding the age of the expunction proposal to offenders under the age of 21 years, addressing the responsibility of third-party providers of prior record information regarding expunctions, and reviewing the proposal for a conditional discharge option for youthful offenders as proposed by Commissioner Robert Johnson, the representative of the North Carolina Conference of District Attorneys.

After some discussion, the Sentencing Commission agreed to study these issues. It established the Expunction Subcommittee to conduct the study and report its recommendations back to the Commission.

**II. Deliberations**

The Expunction Subcommittee met on September 26, October 31, and November 14, 2008. The members began the study by reviewing the elements of the three existing statutes that provide for expunction of records of convictions. (G.S. 14-50.30, 15A-145, and 90-96(e).) They discussed the elements that were common among the statutes and those that were different. They identified several possible reasons for the differences.

The members also reviewed the elements of several expunction bills that were introduced but did not pass in the 2007-08 Session of the General Assembly. They looked at two bills that

applied to youthful offenders, House Bill 898 and Senate Bill 677, and two bills that applied to all offenders, House Bill 176 and Senate Bill 1081. The members discussed the policy issues and options that were raised in these bills.

Staff provided a statistical profile of the group of offenders who would be eligible for expunction under the terms of the study request. According to recent data, these offenders most frequently committed breaking or entering offenses, larceny offenses, and possession of controlled substances offenses. Staff also reviewed the collateral consequences of a felony conviction, describing the effects on the offender's employment, public assistance, and educational opportunities.

After some discussion, the members of the Subcommittee concluded that the idea of offering expunction of records for certain youthful offenders would have merit. They recognized that North Carolina is one of only two states where 16- and 17-year-old offenders are treated as adults. Any non-violent felony conviction they receive is not confidential and cannot subsequently be expunged, as with a juvenile adjudication. This is also the case for 13- through 15-year-old offenders who are transferred from juvenile court. A felony conviction can bar a young person from many aspects of society, including education and employment opportunities.

The members of the Subcommittee then reviewed various options and selected the specific conditions under which expunction should be allowed. Once they had a complete proposal, the members discussed how it would relate to the proposal to raise the age of juvenile jurisdiction to 18. Finally, the members addressed the additional issues raised at the September Sentencing Commission meeting. The Expunction Subcommittee developed recommendations and reported them to the Sentencing Commission. The Commission discussed the recommendations, made amendments, and adopted them at its December 12, 2008, meeting.

### **III. Recommendations**

#### **Expunction**

- 1. The Sentencing Commission finds that the idea of offering expunction of records for youthful offenders who have been convicted of a non-violent felony and who have no prior convictions would have merit under certain conditions.**

*Commentary:* The Commission recognized that there is merit to the idea of giving certain offenders the opportunity to expunge certain non-violent felony convictions after they have matured and proved themselves over a period of time. This proof would include living crime-free since the conviction, completing the conditions of their sentence and earning a high school diploma or its equivalent. The decision to grant or deny an expunction would be left to the discretion of the judge, based on the totality of the circumstances. The judge would examine the offender's life prior to the conviction and since the conviction. If granted, an expunction would restore the offender to his or her status prior to the offense.

**2. The Sentencing Commission recommends an expunction proposal with the following conditions:**

A. Age: The person was under the age of 18 years at the time of the offense.

*Commentary:* In the study request, the Representatives asked the Sentencing Commission to focus on offenders under the age of 18 years. Current expunction statutes focus on the age at the time of the conviction but the Commission stated that tying eligibility to the age at the time of the offense would avoid the disparity that might arise as a result of less frequent court schedules in some districts and other issues that are not related to the offender's culpability.

B. Offenses: The person plead guilty to or was found guilty of a Class H or I felony, other than a traffic violation, and the offense fit into one of three categories:

1. Breaking or entering offenses not involving a residence or dwelling.
2. Larceny offenses under Article 16 of Chapter 14 of the North Carolina General Statutes where the actual value of the property for each offense was less than the felony larceny amount (G.S. 14-72(a)) at the time of the offense plus fifty percent and excluding felony larceny from a merchant (G.S. 14-72.11) or mercantile establishment (G.S. 14-72.1(d1)).
3. Non-trafficking controlled substance offenses not involving methamphetamine.

Multiple convictions may be expunged if they were adjudicated in the same session of court.

*Commentary:* In the study request, the Representatives asked the Sentencing Commission to focus on non-violent felonies. Class H and I felony offenses generally deal with property loss and societal injury as opposed to personal injury. The Commission decided that focusing on these classes would be best for public safety purposes.

In addition, data from the Sentencing Commission's Fiscal Year 2006/07 Statistical Report showed that youthful offenders with no prior record who were convicted of Class H and I felony offenses were most frequently convicted of breaking or entering, cocaine possession, possession with intent to sell or deliver cocaine, and larceny of a motor vehicle. The Commission decided that the proposal should focus on the offenses that these offenders tended to commit.

The Commission also decided that expunction should be available for offenders who committed more than one offense while under the age of 18 years when those offenses were adjudicated in the same session of court.

C. Prior Convictions: The person had not previously been convicted of any felony or Class A1 or Class 1 misdemeanor, other than a traffic violation. For purposes of this section, "traffic violation" does not include impaired driving, misdemeanor or felony death by vehicle, involuntary manslaughter or any homicide resulting from operation of a motor vehicle, and speeding to elude arrest.

*Commentary:* In the study request, the Representatives asked the Sentencing Commission to focus on offenders who have no prior adult convictions. The Commission decided to exclude prior convictions for Class 2 and Class 3 misdemeanors because they are excluded from felony prior record level calculation. Prior convictions for traffic offenses are excluded from all of the current expunction statutes; however, there is no standard definition of what constitutes a traffic offense.

D. Evidence of Rehabilitation: The person provides information supporting the following requirements:

1. The person has been of good behavior for at least six years following the date of conviction. This includes no previous deferred prosecutions, conditional discharges, or expunctions. The person must provide information on any intervening arrests or outstanding warrants.
2. The person has not been convicted of any felony or Class A1 or Class 1 misdemeanor, other than a traffic violation, prior to or since the date of conviction. For purposes of this section, "traffic violation" does not include impaired driving, misdemeanor or felony death by vehicle, involuntary manslaughter or any homicide resulting from operation of a motor vehicle, and speeding to elude arrest.
3. The person does not have any outstanding restitution.
4. The person possesses a high school diploma, equivalency certificate, or General Educational Development certificate unless the person proves to the court that he or she is unable to do so.
5. Affidavits of two persons who are not related to the petitioner or to each other by blood or marriage as to the good character and reputation of the person in the community.

*Commentary:* Current expunction statutes require that the offender be of good behavior for a definite period of time from the date of the conviction, not have any outstanding restitution, and provide affidavits as to his or her good character and reputation in the community. The Commission decided that a period of at least six years would be appropriate because the proposal was addressing the expunction of felony convictions. The statute dealing with expunction of misdemeanor convictions requires at least two years. A waiting period of at least six years would also place a youthful offender closer to 21 years of age. (*See* E. 1. below.)

In addition to the requirements of good behavior, the Commission stated that an offender should show that he or she has made some effort toward self-improvement. In this case, the offender should have earned a high school diploma, equivalency certificate, or General Educational Development certificate if he or she is able to.

E. Process: The person files the petition for expunction in the court of conviction.

1. The petition may be filed six years after the date of conviction provided that the person is at least 21 years of age, has completed all the conditions of his or her sentence, and does not have any pending charge for a felony, Class A1 or Class 1 misdemeanor.



2. The petition shall include a general description of the crime satisfactory to the court.
3. The person shall serve the petition upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney has 30 days to file an objection; however, the judge may extend that period for a reasonable amount of time. The district attorney shall make best efforts to notify the victim, all law enforcement agencies within the district, and the State Bureau of Investigation of the request for expunction. In the event the petitioner is under investigation for any alleged criminal involvement, the district attorney may enter a general objection and provide an ex parte affidavit to the court from the law enforcement agency explaining the circumstances of the investigation.
4. The judge, the district attorney, and the attorney for the petitioner shall review any available juvenile record.
5. If the court finds that the person has met the requirements, it may, in its discretion, order the expunction of the records.

*Commentary:* Because felony offenses are serious offenses, the Commission decided that expunging records of those convictions should not be automatic. The Commission recommended a process whereby the district attorney and the defense counsel could have input into the decision based on consideration of the offender's past, including juvenile history, but the judge would ultimately have the discretion to grant or deny the expunction of the records. Accessing the offender's juvenile history for this purpose may require that the offender sign a waiver or that the General Assembly amend the juvenile record laws.

- F. Effects: A court order to expunge the records would have the following effects:
1. The person would be completely restored to the status he or she occupied before the arrest, indictment, information, trial, and conviction.
  2. The person would be allowed to deny the arrest, indictment, information, trial, conviction, and expunction without being guilty of perjury or otherwise giving a false statement. However, the person would be required to disclose the conviction if he or she is pursuing certification under the provisions of Chapter 17C (NC Criminal Justice Education and Training Standards Commission) or 17E (NC Sheriffs' Education and Training Standards Commission) of the North Carolina General Statutes.
  3. All court and law enforcement agency records relating to the conviction would be expunged.
  4. The person would be authorized to notify any other applicable State or local government agency to expunge its records relating to the conviction. The agency would be required to do so upon receiving proper notice.
  5. The Administrative Office of the Courts would add the person's name to its confidential file of persons who have been granted an expunction.
    - a. This file would be available to judges of the General Court of Justice for the purpose of ascertaining whether any person charged with an offense has been previously granted an expunction.

- b. This file would be available to the NC Criminal Justice Education and Training Standards Commission and the NC Sheriffs' Education and Training Standards Commission for certification purposes only.

*Commentary:* Current expunction statutes restore the offender to his or her pre-arrest status and allow the offender to deny the conviction. The Commission decided, however, that it may not be appropriate for a law enforcement officer to have a prior felony conviction and therefore recommended giving the commissions that grant law enforcement certification access to the information.

The Commission recognized that other State and local government agencies sometimes receive and keep records of an offender's conviction. However, the members agreed that the courts should not be burdened with notifying every agency that might potentially possess such a record. The Commission instead recommended that the offender be responsible for notifying other State or local government agencies of the expunction. It suggested that the Administrative Office of the Courts develop a standard form certifying that an expunction had been granted and directing any State or local government agency to expunge its records.

- 3. The Sentencing Commission recommends that, at the time of sentencing, the offender be informed of the possibility of having the records of the conviction expunged in the future subject to meeting certain conditions.**

*Commentary:* Expunction is based, in part, on a decision by the offender to live in compliance with the laws of the State after having been convicted of a criminal offense. The Commission stated that youthful offenders might be encouraged to obey the law if they know that it could lead to potential relief from the effects of the conviction in the future. The Commission also suggested that the Administrative Office of the Courts develop a standard form that contained the relevant information for distribution at sentencing.

#### **Additional Issues**

- 4. The Sentencing Commission recommends making conditional discharge with the following conditions available for youthful offenders who commit non-violent felonies:**

A. Age: The defendant was under the age of 21 years at the time of the offense.

B. Offenses: The defendant plead guilty or no contest to or was found guilty of a misdemeanor or a Class H or I felony, except:

1. An offense that requires registration as a sex offender.
2. A violent felony.
3. A felony involving the use or threatened use of a firearm or other deadly weapon.
4. A violent misdemeanor involving the use or threatened use of a firearm or other deadly weapon.
5. An offense that involves breaking or entering of a dwelling house, apartment, or other residence.
6. An offense that involves domestic violence.

7. A motor vehicle offense, driving while impaired, or alcohol-related motor vehicle offense.
- C. **Prior Convictions:** The defendant had not previously been convicted of any felony or Class A1 or Class 1 misdemeanor, other than a traffic violation, or received a prior conditional discharge or deferred prosecution. For purposes of this section, “traffic violation” does not include impaired driving, misdemeanor or felony death by vehicle, involuntary manslaughter or any homicide resulting from operation of a motor vehicle, and speeding to elude arrest.
  - D. **Process:** The process may be initiated after the defendant has entered a plea of guilty or no contest or been found guilty. The judge has the discretion to initiate the process.
  - E. **Conditions:** The judge places the defendant on supervised probation for a term of not less than one year and may impose any valid condition of probation. The initial term may be as long as five years and the term may be extended for up to three years for treatment or restitution.
  - F. **Effects:** If the defendant fulfills the terms and conditions of probation:
    1. The defendant is discharged and the proceedings are dismissed.
    2. The defendant may petition for expunction of public records of arrest, indictment, plea, dismissal and discharge six years after date of conviction or discharge of probation, whichever is later.
    3. The defendant will receive one additional prior record level point if he or she is subsequently convicted of an offense and has previously been granted a conditional discharge as a youthful offender.
    4. The defendant’s name is forwarded to the Administrative Office of the Courts and added to the confidential file containing the names of persons granted conditional discharges.

*Commentary:* The Commission decided that it would be helpful to have an additional tool for handling certain youthful offenders. Conditional discharge would allow the court to intervene earlier in the process in order to provide a defendant with the opportunity to avoid receiving a conviction. If the defendant committed a subsequent offense, however, the conditional discharge would be counted in his or her prior record score.

5. **The Sentencing Commission recommends that, if the expunction proposal and the conditional discharge proposal are adopted, the expunction proposal be available for offenses committed before as well as on or after the effective date of the bill and the conditional discharge proposal be available for offenses committed on or after the effective date of the bill.**

*Commentary:* The Commission stated that both conditional discharge and expunction would be helpful in dealing with the problem of first-time youthful offenders who commit felony offenses. The conditional discharge proposal would be available for eligible offenders at the time of sentencing and would help them to avoid receiving a felony conviction. The expunction proposal would be available for eligible offenders after they complete their

sentences. It would help those offenders who were convicted prior to the effective date of conditional discharge as well as those who were sentenced after the effective date but did not receive a conditional discharge sentence. Conditional discharge and expunction of convictions are currently available under G.S. 90-96 for first-time offenders who commit certain drug offenses and under G.S. 14-50.29 and -50.30 for first-time offenders who commit certain street gang activity offenses.

**6. The Sentencing Commission recommends that criminal justice system officials receive regular training in the elements and requirements of the expunction statutes.**

*Commentary:* In reviewing the current expunction statutes, the Commission acknowledged that there are different elements and requirements in the statutes. The Commission stated that it would be beneficial to the criminal justice system and to the offender if officials received ongoing training in the elements of each statute and the requirements the statutes place on them.

**7. The Sentencing Commission recommends moving all expunction statutes to the same article of a chapter of the North Carolina General Statutes.**

*Commentary:* The three current expunction statutes are located in three different chapters of the General Statutes. The Commission stated that it would be helpful to the court and to the offender if the statutes were brought together into a single article, like the statutes of limitations are in the General Statutes.

**8. The Sentencing Commission makes no recommendation regarding increasing the age for the expunction proposal to include offenders who committed their offense prior to age 21.**

*Commentary:* The Commission acknowledged that the initial study request was limited to offenders under the age of 18 years and that the discussion and proposals were limited to that group.

**9. The Sentencing Commission makes no recommendation regarding amending the expunction statutes to address third-party providers of prior record information.**

*Commentary:* The Commission recognized that the issue of third-party providers is a civil issue that requires a civil remedy. It is, therefore, beyond the scope of the Commission.

**10. The Sentencing Commission makes no recommendation regarding the relationship between its expunction proposal and the recommendation to raise the age of juvenile jurisdiction to 18 years.**

*Commentary:* The Commission stated that expunction of non-violent felony convictions should still be available even if the age of jurisdiction is raised to 18 years. Expunction would be available to those who were convicted of a felony in superior court prior to the change of the age of jurisdiction and to those who are transferred to superior court from juvenile court for a felony offense after the change.

## **APPENDICES**

- A. July 21, 2008, Letter from Representatives Alice Bordsen, Angela Bryant, and Larry Hall.
- B. List of current offenses that would be eligible for expunction under the proposal.



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 CHAIR  
 JUVENILE JUSTICE, CHAIR  
 AGING, VICE CHAIR  
 EDUCATION  
 SUBCOMMITTEE ON COMMUNITY COLLEGES  
 VICE CHAIR  
 JUDICIARY II

July 21, 2008

Honorable W. Erwin Spainhour, Chairman  
 NC Sentencing and Policy Advisory Commission  
 P.O. Box 2472  
 Raleigh, NC 27602

Dear Judge Spainhour,

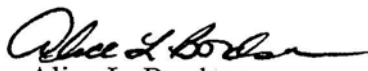
I respectfully request that the Sentencing Commission consider studying the issue of expunction for non-violent youthful offenders. Specifically, I would like the Commission to look at expunction for offenders under the age of eighteen who have been convicted of a non-violent felony and have no prior adult convictions. I am interested in whether the Commission believes such an option would have merit or not and, if so, under what conditions.

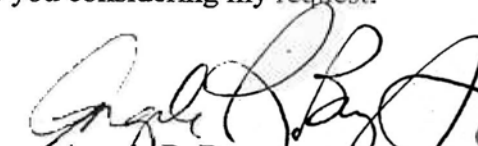
The General Assembly has shown interest in expunction during the 2005-2006 Session as well as the 2007-08 Session. I refer you to House Bill 1084, which passed the House in 2005 and to House Bill 898, which passed the House, and Senate Bill 677, which passed the Senate Judiciary II Committee. House Bill 274, The Street Gang Suppression Act passed into law this year, also contains an expunction provision. These bills reflect some of the concerns and debates the legislature has had and may be useful to your study of the issue.

I am also interested in knowing how this option for expunction would relate to the matter of raising the age of juvenile jurisdiction to 18.

Expunction is an important issue and one that may be before the General Assembly again in the 2009 Session. I appreciate you considering my request.

Sincerely,

  
 Alice L. Bordsen  
 District 63

  
 Angela R. Bryant  
 District 7

  
 Larry D. Hall  
 District 29



## APPENDIX B

List of current offenses for which expunction would be available.

1. Breaking and entering offenses excluding a residence or dwelling.
  - A. Class H felonies:
    - G.S. 14-54. Breaking or entering buildings generally.
  - B. Class I felonies:
    - G.S. 14-56. Breaking or entering into or breaking out of railroad cars, motor vehicles, trailers, aircraft, boats, or other watercraft.
  
3. Larceny offenses under Article 16 of Chapter 14 of the North Carolina General Statutes where the actual value of the property was less than the felony larceny amount (G.S. 14-72(a)) at the time of the offense plus fifty percent and excluding felony larceny from a merchant (G.S. 14-72.11) or mercantile establishment (G.S. 14-72.1(d1)).
  - C. Class H felonies:
    1. G.S. 14-71. Receiving stolen goods; receiving or possessing goods represented as stolen.
    2. G.S. 14-71.1. Possessing stolen goods.
    3. G.S. 14-72. Larceny of property; receiving stolen goods or possessing stolen goods.
    4. G.S. 14-72.2. Unauthorized use of a motor-propelled conveyance.
    5. G.S. 14-72.7. Chop shop activity.
    6. G.S. 14-74. Larceny by servants and other employees.
    7. G.S. 14-75. Larceny of chose in action.
    8. G.S. 14-75.1. Larceny of secret technical processes.
    9. G.S. 14-78. Larceny of ungathered crops.
    10. G.S. 14-79. Larceny of ginseng.
    11. G.S. 14-79.1. Larceny of pine needles or pine straw.
    12. G.S. 14-81. Larceny of horses, mules, swine, or cattle.
    13. G.S. 14-85. Pursuing or injuring livestock with intent to steal.
  - D. Class I felonies:
    1. G.S. 14-72.6. Felonious larceny, possession, or receiving of stolen goods from a permitted construction site.
    2. G.S. 14-81. Larceny of dogs.
  
3. Non-trafficking controlled substance offenses excluding offenses that actually involve methamphetamine.
  - A. Class H felonies:
    1. G.S. 90-95(b)(2). Sale of a Schedule III, IV, V, or VI controlled substance.
    2. G.S. 90-95(b)(1). Manufacture, deliver, or possess with intent to manufacture, sell or deliver a Schedule I or II controlled substance.
  - B. Class I felonies:

1. G.S. 90-95(b)(2). Manufacture, deliver, or possess with intent to manufacture, sell or deliver a Schedule III, IV, V, or VI controlled substance.
2. G.S. 90-95(d)(1). Possession of a Schedule I controlled substance.
3. G.S. 90-95(d)(2). Possession of more than four dosage units of Hydromorphone.
4. G.S. 90-95(d)(2). Possession of any amount of Amphetamine, Cocaine or Phencyclidine or derivative thereof.
5. G.S. 90-95(d)(4). Possession of more than 1.5 ounces of Marijuana or .15 ounces of Hashish.
6. G.S. 90-95(c). Create, sell or deliver, or possess with intent to sell or deliver, a counterfeit controlled substance.