



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

EXPUNCTION GUIDE FOR CLERKS

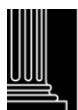
October 2010
Prepared by Court Services



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0.0. Introduction

This document is intended to be a basic guide for clerks of superior court about the processes for expunction of records of the clerk, pursuant to the statutes authorizing expunction of those records.

Revision History

Appendix A provides the revision history for this guide. As changes are made to the guide's content to account for new legislation, updated business processes, or changes to automated systems, a brief summary of changes in each edition will be included in the revision history. With each edition, the guide will be reproduced in full, so prior editions should not be relied upon after publication of a new edition.

Replacement of Prior Expunction Documentation

This guide replaces prior presentations and handouts, generally titled "All About Expunctions," published by the North Carolina Administrative Office of the Courts (NCAOC). Prior versions of that document should not be relied upon as authoritative, because they are now outdated. In particular, the statutes for expunction of criminal case records were amended significantly by the passage of three legislative acts in 2009 and 2010:

- Session Law 2009-510 (Senate Bill 262, Expunctions/Purge Online Databases)
- Session Law 2009-577 (House Bill 1329, Consolidate Expunction Statutes)
- Session Law 2010-174 (House Bill 726, Clarify Expunctions)

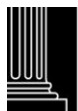
The latter act, Session Law (S.L.) 2010-174, reconciled conflicting provisions of the two prior acts and made minor technical changes to the overall expunction process.

Effective Dates

Unless otherwise specified, the processes and statutes described in this guide apply as of **October 1, 2010**, the effective date of both S.L. 2009-510 and S.L. 2010-174.

Questions

Questions about the guide or expunction procedures should be directed to the Records Officer of the NCAOC's Court Services Division at (919) 890-1341



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1.0. Expunction In General

1.1. Authority for Expunction

The clerk of superior court is the custodian of the records of the courts, and is required to keep records of “civil actions, special proceedings, estates, criminal actions, juvenile actions, minutes of the court, judgments, liens, lis pendens, and all other records required by law to be maintained,” according to rules prescribed by the Director of the Administrative Office of the Courts.¹

Except where made confidential by statute, the clerk’s records are public records, open to inspection of the public during regular office hours.² As public records, no person may “destroy, sell, loan, or otherwise dispose of” the clerk’s records without the authorization of the N.C. Department of Cultural Resources.³ In fact, unauthorized destruction or removal of the court’s records is a crime, prosecutable under several statutes.⁴

This general prohibition on the destruction or removal of records applies to the courts. While the courts “have the inherent power and duty ... to make their records speak the truth, they are without authority to annul or expunge an accurate record, or the records of another agency of government, absent the authority of statute.”⁵ Therefore the court may not destroy its own records except as specifically authorized by statute, such as in the various expunction statutes.

1.2. Legal Questions about Expunction

This guide does not attempt to give a comprehensive explanation of the criteria required for each type of expunction. Persons with questions about what records qualify for expunction should be directed to review the statutes or to consult with an attorney. **Neither the clerk nor the NCAOC can provide legal advice on this topic.** Ultimately, whether or not a record may be expunged is to be decided by the judge ruling on the petition.

1.3. Access to Information about Expunged Cases

When a case is expunged, it is as if the case (or the portion expunged) never existed. The clerk and the NCAOC should not acknowledge that there was ever any such record, even if presented with copies of the record made prior to its expunction. However, this presents problems for former petitioners who later need records documenting their prior expunctions.

1.3.1. Copies of Expunction Orders for Petitioners

As described below in the sections for the different types of expunctions, the NCAOC strongly recommends that any petitioner obtain a certified copy of an order expunging the record. After the clerk’s destruction of the file, there is almost no circumstance in which a copy of the order may be produced.

1.3.2. Requests for Verification of Expunction

Pursuant to G.S. 15A-151(a), the NCAOC can not acknowledge a prior expunged case, except:

- to the judge hearing a new petition for expunction, when determining whether or not the petition is barred by a prior expunction;
- to the petitioner as provided in G.S. 15A-152; and
- in response to a subpoena or other court order issued in a civil action under G.S. 15A-152.

¹ G.S. 7A-109. See also G.S. 7A-180(3) and 7A-343(3).

² G.S. 7A-109(a). See also G.S. 132-6.

³ G.S. 121-5(b).

⁴ See, e.g., G.S. 121-5(b) and G.S. 14-76.

⁵ Opinion of Attorney General to James J. Coman, Director, State Bureau of Investigation, Oct. 13, 1995, citing *State v. Bellar*, 16 N.C. App. 339, 192 S.E.2d 86 (1972). Available online at:

<http://www.ncdoj.gov/About-DOJ/Legal-Services/Legal-Opinions/Opinions/Criminal-Law-and-Procedure-Expungement.aspx>



A civil action under G.S. 15A-152 occurs when a person whose record was expunged sues a private entity in the business of providing criminal background checks, when that private entity's disclosure of the expunged case has caused the person some injury (e.g., being denied a job). As evidence of the expunction, the person may apply to the NCAOC (*not* to the clerk) for verification of the prior expunction.

If a petitioner asks how to obtain verification of a prior expunction from the NCAOC, direct them to or provide a copy of the AOC-G-260, Application For Certificate Of Verification Of Prior Expunction. The form may be found on the NCAOC's forms website at <http://www.nccourts.org/Forms/FormSearch.asp>.

1.4. Summary of Expunction Statutes and Forms

Table 1 on the next page summarizes the expunction statutes for records of the court. Most expunction statutes concern criminal records of persons prosecuted as adults in the district and superior courts. A few statutes, listed at the end of the table, concern the expunction of certain records of juvenile proceedings and involuntary commitments of minors. The columns of the table are:

- **Statute (N.C.G.S.)** – the statute under which a particular type of expunction is authorized.
- **Records to Which Statute Applies** – a general description of the types of records or cases covered by the expunction statute.
- **AOC Form** – The form number of any pre-designed petition and order for expunction under the listed statute. NCAOC forms may be found online by searching with the form number on the NCAOC's forms website: <http://www.nccourts.org/Forms/FormSearch.asp>

Several of the petition forms listed have an accompanying instruction sheet. The form number for the instruction sheet is the same as the petition, with the letter "I" added to the end. (e.g., AOC-CR-264I.) When searching for the petitions by form number on the website, above, both the petition form and the instruction sheet will be listed as search results. Petitioners should be instructed to print *both* forms, so they will have a copy of the instructions for completing the petition and obtaining a hearing. The forms with instruction sheets are the AOC-CR-264, -266, -267, -268 and -269.

- **Fee** – The fee that must be paid to the clerk of superior court prior to a hearing on the expunction petition. The fee does not apply if the petitioner is allowed to petition as an indigent.⁶

⁶ G.S. 15A-145(e) and G.S. 15A-145.2(d).



Statute (N.C.G.S.)	Records to Which Statute Applies	AOC Form	Fee
Expunctions of Criminal Records			
15A-145(a)	Misdemeanor convictions	AOC-CR-264	\$125.00
15A-145(d1)	Misdemeanor larceny convictions (older than 15 years)	AOC-CR-267	\$125.00
15A-145.1	Gang offenses	AOC-CR-269	None
15A-145.2(a)	Drug offenses dismissed after conditional discharge under G.S. 90-96(a) or (a1)	AOC-CR-266	\$65.00
15A-145.2(b)	Drug offenses, dismissed or defendant acquitted	AOC-CR-266	\$65.00
15A-145.2(c)	Drug or drug paraphernalia convictions	AOC-CR-266	\$65.00
15A-145.3(a)	Toxic vapors offenses dismissed after conditional discharge under G.S. 90-113.14(a) or (a1)	AOC-CR-268	None
15A-145.3(b)	Toxic vapors or drug paraphernalia offenses, dismissed or defendant acquitted	AOC-CR-268	None
15A-145.3(c)	Toxic vapors convictions	AOC-CR-268	None
15A-146(a)	Criminal charge (or alcohol infraction before 12/1/1999), dismissed or defendant acquitted	AOC-CR-264	None
15A-146(a1)	Multiple criminal charges, dismissed or defendant acquitted	AOC-CR-264	None
15A-147	Convictions or charges resulting from identity theft	AOC-CR-263	None
15A-148	DNA records upon appellate reversal of conviction or upon pardon of innocence	None	None
15A-149	Conviction after pardon of innocence	AOC-CR-265	None
Other Expunction Statutes			
7B-3200 - 3202	Juvenile delinquency/undisciplined records	AOC-J-903M AOC-J-904M AOC-J-905M AOC-J-906M AOC-J-909M	None
122C-54(e)	Mental health commitment of minors	None	None

Table 1 – Summary of Expunction Statutes and Forms

The older AOC-CR-237, Request And Reports Convictions/Expunctions Dismissals And Discharge, is no longer accurate and was discontinued in 2009. Parties filing petitions for expunction should be directed to the current forms on the NCAOC's forms search page: <http://www.nccourts.org/Forms/FormSearch.asp>



2.0. Expunction of Criminal Records

All statutes concerning the expunction of criminal records are found in Article 5 of Chapter 15A of the North Carolina General Statutes.⁷ This section addresses the clerk's processes for the filing, hearing, and disposition of petitions for expunction under the statutes in that article.

2.1. Criminal Expunction Petitions – Filing

Expunction of any record pursuant to Article 5 of Chapter 15A requires the filing of a petition for expunction by the person whose record is to be expunged (the "petitioner," hereafter), either *pro se* or through counsel. This section discusses the processes for the filing of the petition, any required filing fees, and the steps required prior to a hearing on the petition.

2.1.1. Expunction Forms

The forms for each expunction statute in Article 5 are listed with each statute in Table 1 earlier in this guide. For certain expunctions, the petitioner *must* use the official NCAOC form to petition for expunction. The expunctions for which the NCAOC form is required are listed in Table 2.

For Expunction Under...	... Petitioner Must Use:
G.S. 15A-145(a)	AOC-CR-264
G.S. 15A-145(d1)	AOC-CR-267
G.S. 15A-145.1	AOC-CR-269
G.S. 15A-145.2(a)	AOC-CR-266
G.S. 15A-145.3(a)	AOC-CR-268

Table 2 – NCAOC Forms Required for Certain Expunctions

The NCAOC forms are required because each of the listed statutes contains a requirement that the petitioner's application for expunction include an "application on a form approved by the Administrative Office of the Courts" for a criminal record check and a search of the NCAOC's prior expunction records. There is no form "approved by the Administrative Office of the Courts" for this purpose other than the expunction petition forms listed above.

The same expunction provisions listed in Table 2 above also require various affidavits by the petitioner (*e.g.*, that he has been of good behavior since the offense to be expunged) and other persons (*e.g.*, affidavits of the petitioner's good character and reputation in the community). There are no NCAOC forms for the affidavits.

For other expunction provisions, there is no statutory requirement that a petitioner use the NCAOC form. However, petitioners should be urged to use the NCAOC forms, because each form contains the necessary allegations, instructions, and orders for the corresponding statute.

2.1.2. Expunction Fees

Only two expunction statutes require the payment of filing fees: G.S. 15A-145 and G.S. 15A-145.2. The fees apply to any petition filed under the listed statute, so a petition under G.S. 15A-145 requires the payment of the fee, whether the petition is filed under subsection (a) (expunction of youthful misdemeanor convictions) or subsection (d1) (old misdemeanor larceny convictions).

Expunction Statute	Required Fee
G.S. 15A-145	\$125.00
G.S. 15A-145.2	\$65.00

Table 3 – Expunction Fees

The filing fees are not required if the petitioner is permitted to proceed as an indigent. G.S. 15A-145(e) and 15A-145.2(d). The clerk should evaluate a request to petition for expunction as an indigent in the same way that the clerk evaluates requests to sue as an indigent in civil cases under G.S. 1-110.

⁷ Article 5 can be found online at: <http://www.ncleg.net/gascripts/Statutes/StatutesTOC.pl?Chapter=0015A>



2.1.3. Filing Venue

Some of the expunction statutes specify the venue in which the petition must be filed; others do not. As a general rule, the clerk should schedule the hearing in the trial division in which the case was disposed, *i.e.*, petitions in superior court cases should be set before the superior court; petitions in district court cases should be set before the district court. For the two statutes that require filing fees, there is no difference in the filing fee based upon the trial division in which the petition is filed or heard.

2.1.4. Where to House Petitions

When the expunction petition is filed, the original file may have already been destroyed pursuant to the Retention Schedule. If so, the clerk should create a replacement file solely for housing the petition and any reports returned from the SBI and the NCAOC.

If the original file still exists at the time of the filing of the petition, place the petition and any reports returned from the SBI and the NCAOC in the original file.

Any reports from the SBI and the NCAOC are confidential, and therefore must be kept under seal, whether in the original file or a replacement file. The actual petition is not confidential, and therefore does not need to be kept under seal.

2.1.5. “Screening” Expunction Petitions

As custodian of the record, the clerk’s function in the expunction process is to receive petitions for filing, collect any necessary fees, schedule the petitions for hearing when required, and then file (and possibly carry out) any order entered by the court.

Questions such as whether or not a particular matter qualifies for expunction, whether or not the correct form has been used, and whether or not any affidavits or other materials required by a particular expunction statute have been included are not of concern to the clerk’s office. The court before which the petition is heard must determine any questions of its adequacy.

If the petitioner or his attorney has any questions about a petition’s adequacy or what is required for a particular petition, the clerk should not give legal advice about the expunction process. Instead, direct the questioner to the General Statutes. Similarly, the clerk should not express to the court an opinion about the validity of any expunction petition. Advocacy in favor of a petition for expunction must be by the petitioner or his attorney; advocacy against a petition is the purview of the district attorney.

2.1.6. Sending Petitions to the SBI and NCAOC

Certain expunction provisions require a criminal record check and a search by the NCAOC of the confidential index of prior expunctions prior to a hearing on the petition. Some of those provisions refer explicitly to a search by the NC Department of Justice (DOJ), which is performed by the State Bureau of Investigation (SBI), and by the NCAOC. Others merely condition the expunction upon a clean criminal history and having no prior expunction, both of which require a criminal record check and a search of the expunctions file (even though those provisions do not refer explicitly to DOJ or the NCAOC).

When a petition must be sent to the SBI and NCAOC, a judge must initiate the process by signing a request for the record searches. A section for this request is provided on each of the NCAOC expunction forms for the statutes that require it.

After a judge has signed the request, the petition must be sent first to the SBI, who will then send it to the NCAOC. The clerk should inform the petitioner or his attorney of the local process for sending the petition to the SBI. Some clerks send the petitions to the SBI, while others require that the petitioner do so.

SBI/NCAOC Checks Required	Request By Judge Provided On...	SBI/NCAOC Checks NOT Required
G.S. 15A-145(a)	AOC-CR-264	G.S. 15A-145.2(b)
G.S. 15A-145(d1)	AOC-CR-267	G.S. 15A-145.3(b)
G.S. 15A-145.1	AOC-CR-269	G.S. 15A-147
G.S. 15A-145.2(a) and (c)	AOC-CR-266	G.S. 15A-148
G.S. 15A-145.3(a) and (c)	AOC-CR-268	G.S. 15A-149

Table 4 – Petitions Routed to the SBI/NCAOC

When routing petitions to the SBI and NCAOC, **send only one copy**. The clerk should urge petitioners who route their own petitions to the SBI to do the same. The past practice in several counties and by certain attorneys of sending multiple copies of a petition to the SBI and NCAOC has resulted in significant delays in processing the petitions.

2.2. Criminal Expunction Petitions – Scheduling Hearings

Almost all expunctions require a hearing before the court. For expunction petitions sent to the SBI and NCAOC for record checks, the clerk should not schedule the hearing until the petition has been returned by the NCAOC and the petitioner requests a hearing.

For expunctions that do not require record checks, the clerk should schedule the hearing upon filing of the petition and collection of any fees (if required for the expunction in question). Upon scheduling the hearing, the clerk should notify both the petitioner and the district attorney of the hearing date.

For petitions under G.S. 15A-145(a), -145(d1), and -145.1, the district attorney must have at least ten (10) days from service of the petition in which to object to the petition. The procedure for such objections is not provided in the statutes, but this requires that the hearing on petitions under those statutes be scheduled at least ten days after service upon the district attorney.

For petitions under G.S. 15A-146 that include a request to expunge DNA records under subsection (b1) of that section⁸, the hearing must be scheduled at least twenty (20) days after service of the petition on the district attorney.

The other expunction statutes do not specify a waiting period, so the hearing can be scheduled at any time that affords both parties reasonable notice.

The only exceptions to the requirement of a hearing are:

- G.S. 15A-148, for the expunction of DNA records when the petitioner’s conviction was reversed and dismissed by the appellate division or when the petitioner received a pardon of innocence; and
- G.S. 15A-149, for expunction of the entire case record when the petitioner has received a pardon of innocence from the Governor.

For a petition filed under either section, the clerk must verify whether the appellate division’s final opinion dismissing the case or the Governor’s warrant of the pardon has been filed with the clerk. The clerk should then provide the petition and the verification to the court for a ruling. There is no hearing.

⁸ Note that this is different from a petition to expunge DNA records under G.S. 15A-148, which applies only when the petitioner’s conviction was reversed and the case dismissed by the appellate division or when the petitioner received a pardon of innocence from the Governor. A request under G.S. 15A-146(b1) appears to be incident to a petition to expunge the entire charge under 15A-146, generally.

2.3. Criminal Expunction Petitions – Processing Orders

2.3.1. Petition Denied

When an expunction petition is denied, the clerk should retain the order denying the petition and all materials associated with the expunction until the period for the petitioner to appeal the court's order has expired.

2.3.1.1. Retain All Petition Material Pending Appeal

The expunction statutes do not specify the procedure or deadline for appeals from expunction orders, so it is unclear whether such appeals follow the appellate rules for criminal cases or for civil cases. If criminal, it is further unclear whether or not an appeal from an expunction order entered in district court is appealed to the superior court for a *de novo* hearing or directly to the appellate division.⁹

Because it is unclear what set of appellate statutes or rules apply to appeals from orders on expunction petitions, the clerk should retain a denied petition and all attachments for thirty (30) days after filing of the court's order with the clerk. Thirty days is the longest of the regular appeal deadlines from the trial division.¹⁰ Upon clarification of the applicable deadline by either the appellate division or the General Assembly, this guide will be updated accordingly.

Until the period for appeal has expired, any attached documentation for the petition should be retained under seal and made available only to the court, the petitioner (and his attorney), and the State, upon request. Many expunction petitions will have attached criminal history reports from the SBI and prior expunction reports from the NCAOC. Neither of those attachments is a public record, and so the material must be withheld from public inspection. The order denying the expunction, itself, is a public record.

2.3.1.2. Retain Order Denying Expunction but Destroy All Associated Documentation

When the period for appeal has expired, the clerk should remove the order denying the petition from all attachments. The order denying the expunction is to be placed in the case file. All associated documentation, including the SBI's criminal history, the NCAOC report of prior expunctions, and any affidavits by the petitioner, are to be destroyed.¹¹

If the case type required microfilming, and the original physical case file was already microfilmed or destroyed before the expunction petition was filed, film the order denying the petition via the active microfilming method¹² and destroy the paper copy. If the case type did not require microfilming, and the original physical case file was already destroyed before the expunction petition was filed, destroy the order denying the expunction along with its attachments.

2.3.2. Petition Granted

When a petition for expunction is granted, the clerk must perform a number of actions:

- expunge all record of the case from the court's records;
- notify State and local agencies of the expunction by certified copy of the order; and
- provide a certified copy of the order to the NCAOC.

This section describes the steps necessary to expunge all records of the case, as well as considerations for records outside of the regular criminal case file and some special situations for particular expunctions.

Note: Occasionally, a court may enter an order for expunction that appears questionable on its face. When an order for expunction has been entered, if the order directs the expunction of a record that clearly does not

⁹ At least one case before the N.C. Court of Appeals involved an appeal of an expunction order entered in the district court. *In re Robinson*, 172 N.C. App. 272, 615 S.E.2d 884 (2005). However, that case was heard upon the State's petition for writ of certiorari after the State "failed to timely appeal the order of the trial court." *Id* at 273. It was not a direct appeal, and the Court did not indicate whether jurisdiction would have lay with the appellate division had the State timely filed it as a direct appeal.

¹⁰ N.C. Rule of Appellate Procedure 3(c).

¹¹ AOC Rule of Recordkeeping 9.5, Comment D.

¹² AOC Rule of Recordkeeping 2.6.



qualify for expunction (e.g., expunction of an unpardoned murder conviction), the clerk may wish to confirm with the judge who entered the order that the order is what the court intended. If the judge indicates that the order is as intended, then the clerk should carry the order out.

2.3.2.1. Expunging the Court's Records

I. Do not delay expunction pending appeal.

Unlike a denied expunction petition, the clerk should not wait the entire period for appeal before carrying out a granted expunction order. Upon entry of the order, the petitioner is entitled to immediate expunction of the record. The clerk should delay carrying out an expunction order only when there is another order staying the execution of the expunction order during any appeal.

II. Copy of the Order for Petitioner

Upon entry of an expunction order, the NCAOC strongly advises petitioners to obtain a certified copy of the order for their records. The fee for certification under G.S. 7A-308 should be assessed for each copy.¹³

III. Expunging the Physical Case File

- A. Remove the case file and all of its contents from the public shelves. Do not create a “dummy” shuck to take its place; there should be no placeholder on the shelves to indicate that the case ever existed.
- B. If the case has a card in the former card file of the “Index to Criminal Actions,” place the card in the case file.
- C. Place the expunction petition and all associated material in the case file.
- D. Place the case file in a secured location accessible only to the clerk of superior court.
 1. Although the court's order to expunge is to be carried out immediately, the State still may appeal the court's order. If the State is successful in any appeal or other proceeding that reverses the order, the clerk must be able to reconstruct the original record.
 2. For that reason, the NCAOC advises that the clerk retain the original case file for a reasonable period of time in order to be sure that the order will not be reversed. Many clerks' offices hold expunged case files for a period of 3-6 months.
 3. If the clerk retains an expunged file in this manner, it is not a public record and may not be disclosed to anyone. The clerk should treat the file as if it had already been destroyed. The file should be disclosed only:
 - a. to the State or petitioner for the purpose of preparing the record on appeal;
 - b. if the expunction order is reversed, in which case the file becomes public again; or
 - c. in compliance with an order of the court to produce the file or some portion thereof.
- E. Upon expiration of that period, if there is no appeal of the order pending, destroy the case file.
- F. An expunged case file must be destroyed by burning, shredding, or burial.¹⁴

IV. Purging the Electronic Record

- A. **Before deleting the electronic record**, write all microfilm numbers for the case in the “Microfilm No(s).” field of the expunction order. If the expunction order was not entered on an NCAOC form, add the numbers to the order and clearly label them “Microfilm.”
- B. All electronic record of the criminal proceeding must be deleted immediately.

¹³ Note that some clerks take the position that the petitioner is entitled to one free certified copy of the order pursuant to G.S. 7A-308(b), “as a part of the regular disposition of [the] action.” The NCAOC defers to the judgment of the elected clerk on this issue.

¹⁴ NCAOC Rule of Recordkeeping 9.5. Note that burial does not guarantee that others can not obtain the physical file. For that reason, burning or shredding is strongly recommended.



C. Automated Criminal/Infraction System (ACIS)

1. Delete the case on the Clerk's Secured Menu with a reason code of "E" (expunction).
2. The deletion in ACIS will cause the automatic deletion of the case record in the NC Automated Warrant Repository (NC AWARE).

D. Financial Management System (FMS)

1. Replace the petitioner's name on all receipts or other financial records with "John Doe," plus the date of removal in DD-MM-YYYY format (e.g., "John Doe 31-10-2010").
2. The bookkeeper should complete this replacement within 24 hours of receiving a copy of the expunction order from the criminal clerk. Note the completion of the replacement on the copy of the order and return it to the criminal clerk.¹⁵

V. Related Civil Records Not Expunged

- A. An order of expunction generally applies **only** to the criminal case and its incidents (e.g., a law enforcement agency's record of the arrest).
- B. There is limited expunction of civil records in G.S. 15A-145 and -146, which allow the expunction of civil revocations of drivers licenses for certain offenses. This is the *only* civil record expunged under the expunction statutes of Chapter 15A.
- C. **Do not** expunge or alter civil records outside of the criminal case file.
 1. Civil judgment abstracts and index entries for attorney fees, restitution, bond forfeitures, or fines and costs docketed as civil judgments must remain undisturbed.
 2. The paper records associated with those judgments (e.g., attorney fee applications and appearance bonds) are to be expunged along with the criminal file.

VI. Other Case Records and Special Situations

A. Criminal Index Books.

1. If the case was recorded in the former criminal index books and the books are still in the clerk's office, the physical entry for the case must be obliterated by marking it out entirely in the book.
2. If the index book has previously been microfilmed, the clerk must contact the State Records Center to arrange the expunction of the entry from the microfilmed version. To do so, contact Becky McGee-Lankford at (919) 807-7353.

B. Index to Criminal Actions (ICA) Cards

1. As noted above, if an ICA index card exists for the case, it should be placed in the physical case file for destruction.
2. If the ICA card has been microfilmed, contact the NCAOC's Micrographics Department at (919) 890-1371 to arrange removal of the card image from the film.

C. Microfilmed/Scanned Records

1. Microfilm records do not require physical expunction. Deletion of the ACIS case with its microfilm reference effectively expunges it from access by the public.
2. Scanned records on CD must be expunged. To do so, contact the NCAOC's Micrographics Department at (919) 890-1371.

D. Minutes

Minutes do not need to be expunged. The inability to search them effectively makes it difficult to locate an expunged case, and their retention schedule ensures their destruction.

¹⁵ NCAOC Rule of Recordkeeping 9.5.

E. Change of Venue/Transfer Cases.

1. When a case has been transferred from one county to another, *both* counties must expunge the record.
2. The clerk in the county in which the expunction order was entered must send a certified copy of the expunction order to the clerk in the other county, who will carry out the order for that county's copy of the record(s).

F. One Charge Expunged, Another Not

1. When the court orders expunction of one charge within a case, but does not order expunction of the entire case, the clerk must expunge only the charge affected by the order.
2. In all physical records of the case (e.g., original criminal process, release orders, judgments), obliterate all reference to the expunged charge by marking it out entirely.
3. In ACIS, the entire case must be deleted. Then re-add the case from scratch under the same case number, including only the charge(s) that was not expunged.
4. If the charge(s) that was not expunged is an infraction, and no criminal charge remains on the case, then re-add the case to ACIS using an IF file number from the same calendar year. Be sure that the case is not flagged for reporting to the Division of Motor Vehicles (DMV).

2.3.2.2. Notifying State and Local Agencies and the NCAOC

Effective October 1, 2010, G.S. 15A-150(b) requires that the clerk send a certified copy of any expunction order to all of the following:

- the sheriff, chief of police, or other arresting agency;
- the Division of Motor Vehicles (DMV) and Department of Correction (DOC); and
- any State or local agency identified by the petition as bearing a record of the offense that has been expunged.

The requirement to notify all of the listed agencies applies to **all** expunction orders entered on or after October 1, 2010. It does not matter when the petition was filed.

The clerk must send the certified copies of all expunction orders to **all** of the listed agencies, regardless of whether or not the clerk thinks the agency has a record of the case. There will be expunctions for which the receiving agency has no record, but G.S. 15A-150 requires that the clerk send the order to all of the listed agencies. Each agency will determine whether or not it has a record to expunge.

The same statute requires that the listed agencies expunge their records of the case, when applicable, and that the arresting agency notify the SBI and Federal Bureau of Investigation (FBI).¹⁶

I. Notifying State and Local Agencies

- A. Copies of expunction orders sent to other State and local agencies must be certified copies.
- B. Arresting agency copies should be sent to the agency and address listed on the petition. The NCAOC's most commonly-used expunction forms have provided a field for identification of the arresting agency and its address since their revision of December 1, 2009.
- C. Copies to DMV and DOC should be sent to the following addresses:

NC Department of Correction
Combined Records
4226 Mail Service Center
Raleigh, NC 27699-4226

NC Division of Motor Vehicles,
Driver and Vehicle Services, Driver Assistance Branch
Attn: Hearings/Adjudication Unit
3118 Mail Service Center
Raleigh, NC 27699-3118

¹⁶ There is a limited exception for DMV, which is prohibited by federal law and regulation from expunging certain records concerning commercial drivers licenses and motor carrier safety.



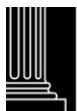
- D. Copies to any other agency should be sent to the agency name(s) and address(es) exactly as provided by the petitioner on the expunction petition, or as ordered by the court.

II. Notifying the NCAOC

- A. A certified copy of **all** criminal expunction orders must be sent to the NCAOC at the address below. Prior to October 1, 2010, some expunction statutes did not require notice to the NCAOC, but copies of **all** expunction orders entered on or after that date must be sent to the NCAOC, regardless of when the petition was filed.

NC Administrative Office of the Courts
Records Officer - Court Services Division
P.O. Box 2448
Raleigh, NC 27602
COURIER BOX: 56-10-50

- B. On the copy sent to the NCAOC, the clerk must certify both that (i) the copy is a true and complete copy of the original, and (ii) certified copies of the order were provided to the necessary State and local agencies, as described above.
 - 1. The expunction petition forms provided by the NCAOC, revised October 2010, include the necessary certification when the clerk dates, signs and seals the "Certification By Clerk" on Side Two of the form.
 - 2. For orders entered on or after October 1, 2010, but which do not include a pre-printed certification of the clerk's notice to the necessary agencies, the clerk should certify the order as entered. As part of that certification, the clerk should hand-write "Notice of order mailed to DOC, DMV and agencies listed on petition on <DATE>," writing the actual date notice was sent to the affected agencies in place of <DATE>.
 - 3. The NCAOC will return expunction orders without the necessary certification to the clerk for re-certification. The clerk's certification of notice to affected agencies is necessary in order for the NCAOC to provide future verification under G.S. 15A-152(d) (on the clerk's behalf) that the clerk notified all agencies as required by G.S. 15A-150.
 - 4. If the clerk's seal is an embossed (raised) seal, please be sure to press firmly when sealing the certified copy to the NCAOC. The NCAOC will scan the final order for long-term retention, rubbing any embossed seal with a light pencil so that it will be captured on the scanned image. For the pencil rubbing to be effective without obscuring any signature or text under it, it must stand out significantly from the page.



3.0. Expunction of Juvenile Records

Unlike the many and varied expunction statutes for criminal records, a single statute sets out the procedure for expunging juvenile delinquency/undisciplined records: G.S. 7B-3200 in Article 32 of Chapter 7B of the General Statutes.¹⁷ However, there are some additional aspects of juvenile expunction, such as additional notices to the court counselor and to the former juvenile when an expunction order is entered.

Unlike the statutes for criminal expunctions in Chapter 15A, for which the statutes were revised significantly in 2009 and 2010, Article 32 of Chapter 7B has not been amended since 2001, so there are no recent legislative changes to the existing procedures described below.

3.1. Juvenile Expunction Petitions – Filing

Like criminal expunctions, the juvenile expunction process requires the filing of a petition for expunction by the person whose record is to be expunged (the “petitioner,” hereafter). This section discusses the processes for the filing of the petition and the steps required prior to a hearing on the petition.

3.1.1. Expunction Forms

The forms for petitions to expunge juvenile delinquency/undisciplined records are listed in Table 5 below. All of the forms listed in this section of the guide can be found on the NCAOC’s forms website at <http://www.nccourts.org/Forms/FormSearch.asp>.

Statute (N.C.G.S.)	Records to Which Statute Applies	AOC Form
7B-3200(a) or (b)	Expunction of adjudication of delinquent/undisciplined status	AOC-J-903M
7B-3200(a) or (b)	Affidavits of good character	AOC-J-904M
7B-3200(h)	Expunction of dismissed delinquency/undisciplined petition	AOC-J-909M

Table 5 – Juvenile Expunction Petition Forms

The AOC-J-904M, Affidavit of Good Character (Expunction of Juvenile Record), is not an actual petition form. Petitions for expunction of adjudications of delinquent/undisciplined status under subsections (a) and (b) require two affidavits of good character from persons unrelated to the petitioner; the petitioner may provide the AOC-J-904M to those persons as a template for the affidavit.

3.1.2. Expunction Fees

There are no fees required for a petition to expunge juvenile records.

3.1.3. Filing Venue

The petition must be filed in the juvenile court of the county in which the petitioner was adjudicated undisciplined (subsection (a)), adjudicated delinquent (subsection (b)), or in which the dismissed delinquency/undisciplined petition was filed (subsection (h)). In other words, the petition must be filed in the county in which the juvenile proceeding occurred.

3.1.4. Where to House Petitions

When the expunction petition is filed, the original JB file may have already been destroyed pursuant to the Retention Schedule. If so, the clerk should create a replacement file solely for housing the petition.

If the original JB file still exists at the time of the filing of the petition, place the petition in the original file.

¹⁷ The expunction process for juvenile delinquency/undisciplined records is rarely used, because many such records are destroyed according to the NCAOC Records Retention and Disposition Schedule, except when destruction or expunction is explicitly prohibited (e.g., class A - E felony adjudications, per G.S. 7B-3200(b)).



3.1.5. “Screening” Expunction Petitions

As custodian of the record, the clerk’s function in the expunction process is to receive petitions for filing, schedule the petitions for hearing when required, and then file (and possibly carry out) any order entered by the court.

Questions such as whether or not a particular juvenile case qualifies for expunction, whether or not the correct form has been used, and whether or not any affidavits or other materials required by the expunction statute have been included are not of concern to the clerk’s office. The court before which the petition is heard must determine any questions of its adequacy.

If the petitioner or his attorney has any questions about a petition’s adequacy or what is required for a particular petition, the clerk should not give legal advice about the expunction process. Instead, direct the questioner to the General Statutes. Similarly, the clerk should not express to the court an opinion about the validity of any expunction petition. Advocacy in favor of a juvenile’s petition for expunction must be by the petitioner or his attorney; advocacy against a petition is the purview of the district attorney or the chief court counselor.

3.1.6. Sending Petitions to the SBI and NCAOC

Petitions for expunction of juvenile records are not to be sent to the SBI or NCAOC. Although a petitioner’s lack of subsequent adjudications or convictions is a criterion of expunction of an adjudication of delinquency under G.S. 7B-3200(b), there is no directive or authority in the statute for a criminal background check by the SBI. Further, prior expunctions have no bearing on a subsequent petition for expunction, so there is no need for a prior expunctions report from the NCAOC.

3.2. Juvenile Expunction Petitions – Scheduling Hearings

All petitions for expunction of an adjudication of delinquent/undisciplined status require a hearing. For a petition to expunge the record of a dismissed petition, a hearing may not be required. When a hearing is required, it may not be scheduled for a date sooner than 10 days after the petition has been served on the appropriate party, as described below.

When a hearing must be scheduled, it must be recorded as with other juvenile hearings.

3.2.1. Expunction of Adjudication of Delinquent/Undisciplined Status

This petition requires a hearing, the petitioner must serve the district attorney with a copy of the petition. The hearing must be scheduled at least 10 days after that service. The AOC-J-903M includes a certificate of service.

If the petition is presented to the clerk for filing prior to service, the clerk should determine when the petitioner or his attorney asserts service will be complete, and complete the hearing section of the form prior to filing. Provide the petitioner or his attorney with three copies (showing the hearing information): one for service on the district attorney, one for the petitioner, and one for re-filing once service is complete. The petitioner or his attorney should return with a completed copy, showing the certificate of service, for filing with the clerk. When the copy with the completed certificate of service has been filed, the clerk may destroy the original copy filed.

If the petition is presented to the clerk for filing after service, the clerk should complete the hearing section of the form and file it. Provide a copy of the filed version to the petitioner, and send a copy to the district attorney as notice of the hearing date.

3.2.2. Expunction of Dismissed Delinquency/Undisciplined Petition

A petition for expunction of a dismissed petition of delinquent/undisciplined status requires a hearing only if the chief court counselor objects to the petition in writing or if the court directs that a hearing be held.

The petitioner must serve a copy of the petition to expunge a dismissed petition of delinquent/undisciplined status on the chief court counselor. When the petitioner or his attorney files such a petition, a certificate of service must be provided. The AOC-J-903M includes a certificate of service.



The clerk should wait ten (10) calendar days after the service of the petition. If the chief court counselor has not filed a written objection within 10 days, deliver the petition to the court for a ruling.

If the chief court counselor files a written objection to the petition, or if the judge directs that a hearing be held after a petition without objection has been delivered to the court for a ruling, the clerk should schedule a hearing and notify both the petitioner and the chief court counselor of the date and location.

3.3. Juvenile Expunction Petitions – Processing Orders

3.3.1. Petition Denied

When a juvenile expunction petition is denied, the clerk should retain the order denying the petition and all materials associated with the petition until the period for the petitioner to appeal the court's order has expired.

3.3.1.1. Retain All Petition Material Pending Appeal

The expunction statutes in Article 32 of Chapter 7B do not specify the procedure or deadline for appeals from juvenile expunction orders, so it is unclear whether such appeals follow the appellate rules for civil cases or the process for appeal of delinquency/undisciplined matters under Article 26 of Chapter 7B.¹⁸

Because it is unclear what set of appellate rules or statutes apply to appeals from orders on juvenile expunction petitions, the clerk should retain a denied petition and all attachments for thirty (30) days after filing of the court's order with the clerk. Thirty days is the longest of the regular appeal deadlines from the trial division.¹⁹ Upon clarification of the applicable deadline by either the appellate division or the General Assembly, this guide will be updated accordingly.

Unlike denied orders for expunction in criminal cases, there is no need for the clerk to retain the denied petition and materials "under seal" while waiting for the appeal deadline to expire. Because the juvenile file is confidential, the clerk merely should retain the expunction petition and associated materials in the file.

3.3.1.2. Retain Order Denying Expunction but Destroy All Associated Documentation

When the period for appeal has expired, the clerk should remove the order denying the petition from all attachments, and destroy all of the attachments, such as affidavits by the petitioner and other persons. The order denying the expunction is to be placed in the juvenile case file. The order may be destroyed along with the records of the delinquency/undisciplined allegation and disposition when the clerk receives NCAOC approval to destroy them pursuant to the retention schedule for juvenile files. If the original documentation was destroyed prior to the filing of the expunction petition, the order denying the petition may be destroyed upon NCAOC approval.

3.3.2. Petition Granted

When a petition for expunction of juvenile records is granted, the clerk must perform a number of actions. These are similar to the steps for expunction of a criminal record, but there are some minor variations. In general, the clerk must:

- expunge all record of the specific allegation or adjudication (which may result in expunction of the entire case file) from the court's records;
- notify only the arresting agencies of the expunction by certified copy of the order; and
- provide a certified copy of the order to the NCAOC.

Note: Occasionally, a court may enter an order for expunction that appears questionable on its face. When an order for expunction has been entered, if the order directs the expunction of a record that clearly does not qualify for expunction (e.g., expunction of adjudication of a Class A - E felony, prohibited by G.S. 7B-3200(b)),

¹⁸ G.S. 7B-2602 provides that review of any "final order of the court" in a juvenile matter may be had by giving notice of appeal in open court at the time of the hearing or in writing within 10 days after entry of the order. However, the statute further defines a "final order" in a way that makes its application to expunction orders unclear.

¹⁹ N.C. Rule of Appellate Procedure 3(c).



the clerk may wish to confirm with the judge who entered the order that the order is what the court intended. If the judge indicates that the order is as intended, then the clerk should carry the order out.

3.3.2.1. Expunging the Court's Records

I. Do not delay expunction pending appeal.

Unlike a denied expunction petition, the clerk should not wait the entire period for appeal before carrying out a granted expunction order. Upon entry of the order, the petitioner is entitled to immediate expunction of the record. The clerk should delay carrying out an expunction order only when there is another order staying the execution of the expunction order during any appeal.

II. Notice of Expunction to Petitioner

- A. Unlike expunction of a criminal record, for which the clerk has no particular duty to notify the petitioner, the clerk is required by statute to give notice of the expunction of a juvenile record to the petitioner.²⁰
- B. When an order is entered to expunge records of an adjudication of delinquency/undisciplined status, prepare and send the AOC-J-906M, Notice of Expunction of Juvenile Record, to the petitioner at his last known address.
- C. If an order to expunge a dismissed petition of delinquency/undisciplined status was entered on the AOC-J-909M, the clerk may send a certified copy of that order to the petitioner. That form contains the required notice to the petitioner.

The petitioner or his attorney also may wish to obtain a certified copy of the order for their records. The fee for certification under G.S. 7A-308 should be assessed for each copy.²¹

III. Expunging the Physical Case File

- A. Expunction of Specific Allegations/Adjudications Versus Expunction of the Entire File
 1. Because all delinquency/undisciplined records in the county for a single juvenile are kept in a single case file (the "JB" subfolder) for the juvenile, an expunction order may require the expunction of only certain allegations or adjudications, but not others.
 2. If the expunction order concerns only specific allegations or adjudications in the juvenile's file, but not others, the clerk should remove from the file all documents relating to the specific allegation/adjudication expunged, but retain the overall file. Do not remove the juvenile's name from the index to juvenile actions.²²
 3. If the expunction order concerns the sole allegation/adjudication in the JB subfolder, the entire JB subfolder must be expunged. If the JB subfolder constitutes the juvenile's entire file for the county, the entire file must be destroyed and the juvenile's name must be removed from the index to juvenile actions.²³
- B. Place the expunction petition and all associated material in the case file.
- C. Retain the expunged material/file until expiration of the State's deadline to appeal.
 1. Although the court's order to expunge is to be carried out immediately, the State still may appeal the court's order. If the State is successful in an appeal or other proceeding that reverses the order, the clerk must be able to reconstruct the original record.
 2. For that reason, the NCAOC advises that the clerk retain the original case file for a reasonable period of time in order to be sure that the order will not be reversed. Many clerks' offices hold expunged case files for a period of 3-6 months.

²⁰ G.S. 7B-3202.

²¹ Note that some clerks take the position that the petitioner is entitled to one free certified copy of the order pursuant to G.S. 7A-308(b), "as a part of the regular disposition of [the] action." The NCAOC defers to the judgment of the elected clerk on this issue.

²² NCAOC Rule of Recordkeeping 12.6, Comment A.

²³ *Id.*



3. Although juvenile files are not public records and there is little risk of public disclosure of expunged allegations/adjudications even when the expunged material remains in the juvenile file until the period for appeal has expired, the clerk should remove the expunged portion (or the entire file, if applicable) from storage with the regular juvenile files. The expunged material may not be made available to anyone, including officials who normally have access to the juvenile files (e.g. court counselors or guardian *ad litem*). The clerk should treat the expunged material/file as if it had already been destroyed. The expunged record should be disclosed only:
 - a. to the State or petitioner for the purpose of preparing the record on appeal;
 - b. if the expunction order is reversed, in which case the file becomes part of the regular juvenile case files again; or
 - c. in compliance with an order of the court to produce the file or some portion thereof.
- D. Upon expiration of the State's period for appeal, if there is no appeal pending, destroy the expunged material/file.
- E. Expunged juvenile records must be destroyed by burning, shredding, or dissolving.²⁴

IV. Purging the Electronic Record

- A. All electronic record of the juvenile proceeding must be deleted immediately.
- B. J Wise
 1. If the expunction order concerns only specific allegations or adjudications in the juvenile's file, but not others, the clerk should delete the J Wise records only for those allegations/adjudications.
 2. The clerk should be careful to delete any events related to the expunged allegation/adjudication in the "Event History" tab.
 3. If the expunction order concerns the sole allegation/adjudication in the file, the entire JB record must be deleted.
- C. Financial Management System (FMS)
 1. Although a juvenile's name never should appear on any financial record associated with the case, it occasionally happens by error, and so the bookkeeper should check the case record in FMS to make sure the juvenile's name does not appear on any receipts or other financial records in the system.
 2. The juvenile clerk should hand-deliver a copy of the expunction order to bookkeeping in order to review of the FMS records.
 3. If the juvenile's name appears in FMS, replace the name on all receipts or other financial records with "John Doe," plus the date of removal in DD-MM-YYYY format (e.g., "John Doe 31-10-2010").
 4. Do not replace the names of the parents/guardians on FMS records, such as for payment against attorney fee judgments.
 5. The bookkeeper should complete this replacement within 24 hours of receiving a copy of the expunction order from the juvenile clerk. Note the completion of the replacement on the copy of the order and return it by hand delivery to the juvenile clerk.

V. Related Civil Records Not Expunged

- A. An order of expunction generally applies **only** to the juvenile case file and its incidents (e.g., law enforcement records of the arrest).

²⁴ The NCAOC's Records Retention and Disposition Schedule, "About This Records Schedule," p. iv, provides that "[f]or confidential records the clerk must maintain physical control of the records through the disposal process until they reach the point where they are illegible." Because burning, shredding and dissolving (reducing the paper to pulp) are the only approved methods of destruction that render the records "illegible" while still within the clerk's physical control, other methods such as burial or selling to a waste paper recycler are not acceptable.



- B. **Do not** expunge or alter civil records outside of the juvenile case file.
 - 1. Civil judgment abstracts and index entries, such as attorney fee judgments against the juvenile's parents, must remain undisturbed.
 - 2. Pursuant to Rule of Recordkeeping 12.7,²⁵ paper records associated with those judgments (e.g., attorney fee judgments) are to be retained even after the destruction of the juvenile file, in a separate, confidential file, until the associated judgment is satisfied.

VI. Other Case Records and Special Situations

A. Juvenile Index Books.

If the case was recorded in the former (green) juvenile index book and the book is still in the clerk's office, the physical entry for the case must be obliterated by marking it out entirely in the book.

B. Minutes

Because the minutes of juvenile court are not open to public inspection, there is no need to expunge the entries related to the juvenile case from the minutes.²⁶

C. Verbatim Record of Hearings

- 1. The verbatim recording of any hearings for the expunged allegation/adjudication also should be destroyed.
 - a. If the recording is co-mingled on the same CD with recordings from other cases, only the portion related to the expunged case is to be destroyed. For technical assistance, contact the Court Services Analyst (CSA) for your county.
 - b. It is possible that such records already were destroyed prior to the expunction pursuant to a court order under G.S. 7B-3000(d).
- 2. Because the hearing on the expunction petition was recorded, that recording also must be destroyed.

D. Change of Venue/Transfer Cases.

- 1. When a case has been transferred from one county to another, or when adjudication and disposition occur in different counties, *both* counties must expunge the record.
- 2. The clerk in the county in which the expunction order was entered must send a certified copy of the expunction order to the clerk in the other county, who will carry out the order for that county's copy of the record(s).

3.3.2.2. Notifying Law Enforcement Agencies and the NCAOC

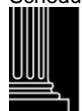
Unlike expunctions of criminal cases, the clerk notifies only certain agencies of a juvenile expunction.

I. Notifying State and Local Agencies

- A. Copies of juvenile expunction orders sent to other State and local agencies must be certified copies.
- B. The clerk must send a certified copy of **all** juvenile expunction orders to the sheriff, chief of police, or other law enforcement agency involved with the allegation/adjudication expunged.
- C. Notice to chief court counselor.

²⁵ Adopted by the Rules of Recordkeeping Committee but not yet published as of the initial publication of this guide. Notice of the newly-adopted Rule will be provided by the NCAOC's Court Services Division when the rule is published.

²⁶ The minutes of juvenile court are destroyed after three years, so there is even less likelihood of disclosure of an expunged juvenile case, even to officials like the court counselors who have access to juvenile court records. NCAOC Records Retention and Disposition Schedule VII.3.



1. For expunction of a dismissed petition of delinquency/undisciplined status pursuant to G.S. 7B-3200(h), the statute specifically requires that the clerk give a certified copy of the order to the chief court counselor.
2. For expunction of an adjudication of delinquency/undisciplined status, there is no statutory requirement to notify the court counselor, and the court's order is directed only to the clerk's records and to law enforcement.
 - a. Records of the Department of Juvenile Justice and Delinquency Prevention (DJJDP) in the custody of court counselors are "retained or disposed of as provided by the Department," so the expunction order apparently does not apply to their records.
 - b. The clerk should consult with the chief district court judge and chief court counselor as to whether or not DJJDP wishes to receive copies of expunction orders for adjudicated cases.

II. Notifying the NCAOC

A certified copy of **all** juvenile expunction orders must be sent to the NCAOC at the address below.

NC Administrative Office of the Courts
Records Officer - Court Services Division
P.O. Box 2448
Raleigh, NC 27602
COURIER BOX: 56-10-50



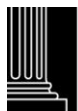
4.0. Expunction of Mental Health Commitment Records for Minors

G.S. 122C-54(e) provides the following for records of mental health commitments of minors under Article 5 of Chapter 122C:

“Upon the request of the legally responsible person or the minor admitted or committed, and after that minor has both been released and reached adulthood, the court records of that minor made in proceedings pursuant to Article 5 of this Chapter may be expunged from the files of the court. The minor and his legally responsible person shall be informed in writing by the court of the right provided by this subsection at the time that the application for admission is filed with the court.”

That is the only statutory provision concerning expunction of such records. There are no procedures or other criteria for such expunctions beyond the text quoted above. For that reason, the NCAOC has developed no forms or official procedures for this process. The information below is provided only as basic guidance for the processing of any petition for expunction under G.S. 122C-54(e). In the event such a petition is filed, the clerk should contact the Court Services Analyst (CSA) for your county for assistance.

- **Forms** – There are no NCOAC forms for G.S. 122C-54(e).
- **Fees** – There are no fees or other costs for expunction under this section.
- **Venue** – Because commitment proceedings under Article 5 of Chapter 122C are before the district court, a petition for expunction under this section should be presented to a district court judge.
- **Hearing** – There is no provision for a hearing under G.S. 122C-54(e). If a petition is filed, consult the chief district court judge for guidance as to whether or not the petition in question requires a hearing.
- **Orders denied** should be included in any SPC case file already established for the minor.
- **Orders granted** should result in destruction of all records related to the commitment proceeding. Because G.S. 122C-54(e) provides only for expunction of “court records,” the clerk should **not** notify other agencies (e.g., law enforcement agencies that may have transported the minor) of the expunction. Further, the clerk should not send a copy of the expunction order to the NCAOC.



5.0. Expunction-Related Topics

This section covers topics related to expunctions, but which are not directly part of any expunction process.

5.1. Conditional Discharges and Dismissals

Several statutes provide for a process known as “conditional discharge” of certain criminal charges, specifically for:

- gang offenses, G.S. 14-50.29;
- drug and drug paraphernalia offenses, G.S. 90-96; and
- toxic vapors (“huffing”) offenses, G.S. 90-113.14.

When a defendant has been found guilty of or pled guilty to a charge(s) covered by a conditional discharge statute, the court may, with the defendant’s consent and without entering a judgment of conviction, place the defendant on probation. If the defendant complies with all of the conditions of probation, he is discharged (it is no longer “conditional”) and the charge(s) is dismissed.

There are two NCAOC forms for placing a defendant on probation pursuant to a conditional discharge. Both may be found on the NCAOC’s forms website at: <http://www.nccourts.org/Forms/FormSearch.asp>.

- AOC-CR-619, Conditional Discharge Under G.S. 90-96(a); or
- AOC-CR-621, Conditional Discharge Under G.S. 14-50.29 (Gang Offenses).
- **Note:** There is no form currently for G.S. 90-113.14.

When a charge(s) is dismissed at the end of a conditional discharge, the clerk must notify the NCAOC of the dismissal. G.S. 15A-150(a). This applies to any dismissal entered on or after October 1, 2010, pursuant to a conditional discharge. It does not matter when the defendant’s probation under the conditional discharge began. The clerk should notify the NCAOC **only** after the case has been dismissed upon the defendant’s successful completion of the process; there is no need to notify the NCAOC when the defendant is placed on probation at the beginning of the conditional discharge.

When notifying the NCAOC of a dismissal pursuant to conditional discharge, the clerk should send to the NCAOC certified copies of **both**:

- the order that placed the defendant on the conditional discharge; and
- the final order discharging the defendant and dismissing the charge(s).

Appendix A: Revision History

This section lists the history of revisions of this guide, with a brief description of changes made with each edition. Questions about the guide should be directed to the Records Officer of the NCAOC's Court Services Division at (919) 890-1341.

Edition	Published	Revision Notes
1	September 24, 2010	<ul style="list-style-type: none"><li data-bbox="683 394 1403 449">Initial edition. Replaces all prior versions of the "All About Expunctions" handout/presentation.

