

AGENDA

Juvenile Jurisdiction Advisory Committee

November 8, 2018

10:00 a.m. – 2:00 p.m.

Attendees: Reference committee member list.

10:00 a.m.	Greeting & Review of Minutes <ul style="list-style-type: none">• 8/24 Full Committee Minutes• 10/11 LRLI Subcommittee Minutes• Swearing in of new member (Honorable Beth Freshwater-Smith)	Honorable Garry Frank & Mr. Bill D. Davis
10:30 a.m.	Legislative Revisions and Legal Issues Subcommittee Recommendations & Vote	Heather Taraska, Assistant District Attorney, Mecklenburg County
11:00 a.m.	Detention Projections	Michelle L. Hall, Sentencing and Policy Advisory Commission
11:30 a.m.	Implementation Update from Juvenile Justice	William L. Lassiter, Deputy Secretary for Juvenile Justice
12:00 p.m.	LUNCH	
12:30 p.m.	Implementation Update from Juvenile Justice cont'd	William L. Lassiter, Deputy Secretary for Juvenile Justice
1:00 p.m.	New Business	JJAC members
1:30 p.m.	Public Comment [There will be a sign-up sheet for public comment.]	
1:50 p.m.	Next Steps & Chairs' Direction	Honorable Garry Frank & Mr. Bill D. Davis

Additional Instructions: Any changes to your contact information should be sent to Kimberly.Quintus@ncdps.gov.

Next meetings: January 8, 2019 from 10am-2pm at 3010 Hammond Business Pl, Raleigh, NC.

Voting on:

Legislative Revisions and Legal Issues Subcommittee Recommendations

- **Recommendation #1:** Expunction advisement (see attached):
 - Accept TV-4 [v.5] with and/or added and conviction sentence
 - Change (a)(1) to statement
 - Remove (a)(2)
 - (a)(5) be a statement instead of an affidavit

- (e) be removed completely
- Include on line 21 (a)(i) "Petition cannot be filed earlier than completion of the sentence or any period of probation, and upon his 18th birthday."

These changes are tracked on the following pages.

Recommendation #2: Amend 7B-1604(b)(ii)

- **Purpose:** To allow youth with previous motor vehicle violations excluding DWI, to be included under juvenile jurisdiction upon the Dec. 1, 2019 implementation of the Juvenile Justice Reinvestment Act.
- 7B-1604 (b): A juvenile (i) who is transferred to and convicted in superior court or (ii) who has previously been convicted in either district or superior court for a felony or a misdemeanor, including excluding a violation of the motor vehicle laws other than driving while impaired under State law, shall be prosecuted as an adult for any criminal offense the juvenile commits after the district or superior court conviction.

Recommendation #3: Amend NCGS 7B-2508 (g1)

- **Purpose:** To establish the standard of finding related to gang activity, and hence the standard on which the gang suppression portion of S.L. 2017-57 is based.
- (g1) **(Effective December 1, 2019)** Notwithstanding subsection (f) of this section, if a juvenile is adjudicated for an offense that the court finds beyond a reasonable doubt was committed as part of criminal gang activity as defined in G.S. 7B-2508.1, the juvenile shall receive a disposition one level higher than would otherwise be provided for the class of offense and delinquency history level.

Juvenile Justice Implementation Plan

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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BILL DRAFT 2017-TV-4 [v.5]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)
05/01/2018 11:46:20 AM

Short Title: Expunction for Juveniles/Raise Age Implementn. (Public)

Sponsors: Senator Barringer (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING THE CRIMINAL PROCEDURE ACT TO PROVIDE EXPUNCTION OF RECORDS FOR FIRST TIME OFFENDERS UNDER THE AGE OF 18 AT THE TIME OF CONVICTION OF MISDEMEANORS AND CERTAIN FELONIES UPON COMPLETION OF THE SENTENCE PENDING THE RAISE THE AGE IMPLEMENTATION.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

"§15A-145.7. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanors and certain felonies upon completion of the sentence.

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed on or after the person's sixteenth birthday, but before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a Class H or I felony and the offense was committed on or after the person's sixteenth birthday, but before the person attained the age of 18 years, he may file a petition in the court of the county where he was convicted for expunction of the misdemeanor or felony from his criminal record. The petition cannot be filed earlier than: ~~completion of the sentence or of any period of probation, and upon his 18th birthday,~~ and the petition shall contain, but not be limited to limited to, the following:

(1) ~~A statement~~ by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor or felony in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) ~~▼~~

(3) ~~A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

* 2017-TV-4-v-5 *

Deleted: (i)

Deleted: two years after the date of the conviction, or (ii) the completion

Deleted: of any period of probation,

Deleted: whichever occurs later

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<#>each other by blood or marriage, that they know the character and reputation
<#>of the petitioner in the community in which he lives and that his character and
reputation are good.

1 (c) A person may file a petition, in the court of the county where the person was
2 convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the
3 person's criminal record if the person has no other misdemeanor or felony convictions, other than
4 a traffic violation. The petition shall not be filed earlier than 10 years after the date of the
5 conviction for a nonviolent felony or five years for a nonviolent misdemeanor or when any active
6 sentence, period of probation, and post-release supervision has been served, whichever occurs
7 later. The petition shall contain, but not be limited to, the following:

- 8 (1) An affidavit by the petitioner that the petitioner has been of good moral
9 character since the date of conviction for the nonviolent misdemeanor or
10 nonviolent felony and has not been convicted of any other felony or
11 misdemeanor, other than a traffic violation, under the laws of the United States
12 or the laws of this State or any other state.
- 13 (2) Verified affidavits of two persons who are not related to the petitioner or to
14 each other by blood or marriage, that they know the character and reputation
15 of the petitioner in the community in which the petitioner lives and that the
16 petitioner's character and reputation are good.
- 17 (3) A statement that the petition is a motion in the cause in the case wherein the
18 petitioner was convicted.
- 19 (4) An application on a form approved by the Administrative Office of the Courts
20 requesting and authorizing a name-based State and national criminal history
21 record check by the Department of Public Safety using any information
22 required by the Administrative Office of the Courts to identify the individual,
23 a search by the Department of Public Safety for any outstanding warrants on
24 pending criminal cases, and a search of the confidential record of expunctions
25 maintained by the Administrative Office of the Courts. The application shall
26 be filed with the clerk of superior court. The clerk of superior court shall
27 forward the application to the Department of Public Safety and to the
28 Administrative Office of the Courts, which shall conduct the searches and
29 report their findings to the court.
- 30 (5) An affidavit by the petitioner that no restitution orders or civil judgments
31 representing amounts ordered for restitution entered against the petitioner are
32 outstanding.

33 Upon filing of the petition, the petition shall be served upon the district attorney of the court
34 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
35 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
36 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
37 additional 30 days to file objection to the petition. The district attorney shall make his or her best
38 efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the
39 date of the hearing.

40 The presiding judge is authorized to call upon a probation officer for any additional
41 investigation or verification of the petitioner's conduct since the conviction. The court shall
42 review any other information the court deems relevant, including, but not limited to, affidavits
43 or other testimony provided by law enforcement officers, district attorneys, and victims of crimes
44 committed by the petitioner.

45 If the court, after hearing, finds that the petitioner has not previously been granted an 46
expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, ~~or 15A-145.4;~~
47 15A-145.4, or 15A-145.7; the petitioner has remained of good moral character; the petitioner has
48 no outstanding warrants or pending criminal cases; the petitioner has no other felony or
49 misdemeanor convictions other than a traffic violation; the petitioner has no outstanding
50 restitution orders or civil judgments representing amounts ordered for restitution entered against
51 the petitioner; and the petitioner was convicted of an offense eligible for expunction under this

1 section and was convicted of, and completed any sentence received for, a nonviolent felony at
2 least 10 years prior to the filing of the petition or a nonviolent misdemeanor at least five years
3 prior to the filing of the petition, it may order that such person be restored, in the contemplation
4 of the law, to the status the person occupied before such arrest or indictment or information,
5 except as provided in G.S. 15A-151.5. If the court denies the petition, the order shall include a
6 finding as to the reason for the denial.

7 ..."

8 **SECTION 3.** G.S. 15A-151.5(a) reads as rewritten:

9 "**§ 15A-151.5. Prosecutor access to expunged files.**

10 (a) Notwithstanding any other provision of this Article, the Administrative Office of the
11 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available
12 to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under
13 any of the following:

- 14 (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at
15 the time of conviction of misdemeanor; expunction of certain other
16 misdemeanors.
- 17 (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18
18 at the time of conviction of certain gang offenses.
- 19 (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of
20 age at the time of the offense of certain drug offenses.
- 21 (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of
22 age at the time of the offense of certain toxic vapors offenses.
- 23 (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18
24 years of age at the time of the commission of a nonviolent felony.
- 25 (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age
26 limitation.
- 27 (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- 28 (7b) G.S. 15A-145.7. Expunction of records for first offenders under the age of 18
29 at the time of conviction of misdemeanors and certain felonies.
- 30 (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- 31 (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed. 32

32 ..."

33 **SECTION 4.** This act is effective when it becomes law, and applies to offenses
34 committed between July 1, 2017 and November 30, 2019.