



# 2023 AUTOMATED EXPUNCTIONS REPORT

S.L. 2022-47, s. 2(A)

PREPARED BY  
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS  
MARCH 1, 2023



**About the North Carolina Judicial Branch**

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

**About the North Carolina Administrative Office of the Courts**

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.

## Introduction

Section 2.(a) of Session Law 2022-47 required the North Carolina Administrative Office of the Courts (NCAOC) to convene a group of stakeholders to examine and make recommendations to resolve issues that arose with the implementation of G.S. 15A-146(a4), otherwise referred to as automated expunctions of dismissed charges, not guilty verdicts, and finding of not responsible. This section also mandated that NCAOC submit a report on its findings and recommendations and any action it has taken. Specifically, S.L. 2022-47, section 2.(a) provides as follows:

**SECTION 2.(a)** The Administrative Office of the Courts shall convene a group of stakeholders, including representatives from the Conference of District Attorneys, the State Bureau of Investigation, the NC Justice Center, attorneys who represent clients seeking expunctions, clerks and other court personnel, sheriffs, the Division of Motor Vehicles, and individuals with criminal records who are members of the NC Second Chance Alliance to examine and make recommendations to resolve the issues that have arisen with the implementation of G.S. 15A-146(a4), including issues related to notice to all relevant agencies and file retention. The stakeholder group may consider and recommend solutions for issues related to the expunction of records that do not require the total destruction of all court files and that would allow access to these particular expunction records by additional parties.

The Administrative Office of the Courts shall report its findings and recommendations and any action it has taken to make files confidential to the chairs of the House and Senate Appropriations Committees on Justice and Public Safety no later than March 1, 2023.

NCAOC respectfully submits this report pursuant to the legislative mandate in Section 2.(a) of S.L. 2022-47.

## Expunction Working Group Members

<u>Name</u>	<u>Title</u>	<u>Organization</u>
Ryan Boyce	Deputy Director	NC Administrative Office of the Courts
Meredith Brewer	Associate Attorney	Dysart Willis
Audria Bridges	Assistant Director	State Bureau of Investigation
Marie Evitt	Government Relations Counsel	NC Sheriffs Association
Lorrin Freeman	District Attorney	Wake County
Glenn Gerding	Appellate Defender	Indigent Defense Services
Wayne Goodwin	Commissioner	Division of Motor Vehicles
Jan Kennedy	Clerk of Superior Court	New Hanover County
Tonya Mims	Assistant Clerk	Wake County
Jim Mixson	Clerk of Superior Court	Iredell County
Troy Page	Assistant Legal Counsel	NC Administrative Office of the Courts
Diana Powell	Representative	Second Chance Alliance
Bill Rowe	General Counsel	NC Justice Center
Chuck Spahos	General Counsel	Conference of District Attorneys
Leigh Wicclair	Senior Staff Attorney	NC Equal Access to Justice
Alex Williams	Representative	Second Chance Alliance



## Process Summary

The NCAOC convened the requisite group of stakeholders for an initial, in-person meeting on September 13, 2022. There was a presentation from the Conference of District Attorneys, the Conference of Superior Court Clerks, and NCAOC expunction team - the minutes from this meeting are included in this report as Appendix B.

A second, in-person meeting was held on November 1, 2022, with all stakeholders, and with presentations by advocacy organizations, law enforcement, and the NCAOC legislative team – the minutes from this meeting are included in this report as Appendix C. During this meeting, there was a consensus of the four major aspects of expunction statutes that needed to be addressed to remedy issues that arose from the automated expunction process set by S.L. 2020-35:

- 1) Lengthen processing of automatic expunctions to 6 months after the date of disposition upon resumption of automatic expunctions.
- 2) Add automatic expunctions processed pursuant to G.S. 15A-146(a4) to the list of expunction information that prosecutors may access under G.S. 15A-151.5.
- 3) Add statutory authority for District Attorneys and Clerks of Court to access case files of automatic and petition-based expunctions.
- 4) Launch AOC's expunction notification system for local law enforcement upon resumption of automatic expunctions.

## Process Result

Following these meetings, NCAOC developed draft bill language to effectuate these remedies and distributed it to the stakeholder group on December 21, 2022. After continued discussion, NCAOC incorporated stakeholder feedback and codified the changes into the proposed bill draft included in this report as Appendix A.



Short Title: Second Chance Act Solutions

(Public)

Sponsors:

Referred to:

A BILL TO BE ENTITLED  
AN ACT TO IMPROVE THE SECOND CHANCE ACT

The General Assembly of North Carolina enacts:

**REVISE EXPUNCTION STATUTES**

**SECTION 1.(a)** G.S. 15A-146(a4) reads as rewritten:

“(a4) Dismissal, Not Guilty, or Not Responsible on or After December 1, 2021. - If any person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction, the charges in the case are expunged by operation of law no more than 180 days after the date of final disposition if all of the following apply:

- (1) All charges in the case are disposed on or after December 1, 2021.
- (2) All charges in the case are dismissed without leave, dismissed by the court, or result in a finding of not guilty or not responsible.

Notwithstanding the provisions of this subsection, no case with a felony charge that was dismissed pursuant to a plea agreement will be expunged pursuant to this subsection. ~~Prior to December 1, 2021, the~~ The Administrative Office of the Courts shall develop and have in place procedures to automate the expunction of records pursuant to this subsection.”

**SECTION 1.(b)** G.S. 15A-151 is amended to add a new subsection to read:

(a) The Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this Article and the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

- (1) Upon request of a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.
- (2) Upon request of a person requesting confirmation of the person's own discharge or expunction.
- (3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.
- (4) Upon request of State or local law enforcement, if the criminal record was expunged under this Chapter for employment purposes only.
- (5) Upon the request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged under this Chapter for certification purposes only.

- 1 (6) Upon request of the North Carolina Sheriff's Education and Training  
2 Standards Commission, if the criminal record was expunged under this  
3 Chapter for certification purposes only.
- 4 (7) To the district attorney in accordance with G.S. 15A-151.5.
- 5 (8) Upon request of the North Carolina Sheriffs' Education and Training  
6 Standards Commission, if the criminal record was expunged under this  
7 Chapter for purposes of preparing a disclosure statement in accordance with  
8 Article 3 of Chapter 17E of the General Statutes.
- 9 (9) For disclosure of records of previous dismissal pursuant to conditional  
10 discharge, upon joint request of the district attorney and the defendant in a  
11 pending proceeding for the purpose of determining eligibility for a conditional  
12 discharge. Any report disclosed in response to the joint request shall be  
13 delivered only to the clerk of superior court of the county in which the matter  
14 is pending. Upon receipt of the report from the Administrative Office of the  
15 Courts, the clerk shall provide a copy to the district attorney and to the  
16 defendant. The clerk shall otherwise maintain the information as a confidential  
17 record in the court file for the case.

18 (a1) Court records expunged pursuant to this Article shall be deemed confidential and  
19 retained by the clerk of superior court as confidential files. Expunged records maintained by the  
20 clerk under this subsection shall be retained in accordance with the retention schedule for the  
21 underlying case type prescribed by the Director of the Administrative Office of the Courts in  
22 conjunction with the State Archives pursuant to Chapter 121 of the General Statutes. The  
23 Administrative Office of the Courts shall maintain on behalf of the clerks of superior court any  
24 expunged court records retained in electronic form by the clerks under this subsection.

25 (a2) The Administrative Office of the Courts shall make all confidential records  
26 maintained under this section electronically available to the clerk of superior court and to  
27 personnel of the clerk's office designated by the clerk. A clerk shall not disclose to any person  
28 or for any reason the existence or content of any expunged record from a county other than the  
29 clerk's own county. A clerk shall disclose the existence or content of an expunged record from  
30 the clerk's own county only as follows:

- 31 (1) Upon request of a person requesting disclosure or copies of the person's own  
32 record.
- 33 (2) To a district attorney or assistant district attorney.
- 34 (3) To the Office of the Appellate Defender upon appointment of that office as  
35 counsel for the person who was the subject of the expunged record.

36 (b) All agencies required under G.S. 15A-150 to expunge from records all entries made as a  
37 result of a charge or conviction ordered expunged who maintain a licensing agreement to provide  
38 record information to a private entity shall maintain a confidential file containing information  
39 verifying the expunction and subsequent notification to private entities as required by G.S. 15A-  
40 150(d). The information contained in the file shall be disclosed only to a person requesting  
41 confirmation of expunction of the record of the person's own discharge or expunction, as  
42 provided in G.S. 15A-152.

43 (c) The Division of Motor Vehicles shall not be required to expunge a record if the  
44 expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety  
45 Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted  
46 pursuant to either act."

47 **SECTION 1.(c) G.S. 15A-151.5 reads as rewritten:**  
48 **"§ 15A-151.5. Prosecutor access to expunged files.**



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

- 5 (1) ~~G.S. 15A-145. Expunction of records for first offenders under the age of 18~~  
6 ~~at the time of conviction of misdemeanor; expunction of certain other~~  
7 ~~misdemeanors.~~
- 8 (2) ~~G.S. 15A-145.1. Expunction of records for first offenders under the age of 18~~  
9 ~~at the time of conviction of certain gang offenses.~~
- 10 (3) ~~G.S. 15A-145.2. Expunction of records for first offenders not over 21 years~~  
11 ~~of age at the time of the offense of certain drug offenses.~~
- 12 (4) ~~G.S. 15A-145.3. Expunction of records for first offenders not over 21 years~~  
13 ~~of age at the time of the offense of certain toxic vapors offenses.~~
- 14 (5) ~~G.S. 15A-145.4. Expunction of records for first offenders who are under 18~~  
15 ~~years of age at the time of the commission of a nonviolent felony.~~
- 16 (6) ~~G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age~~  
17 ~~limitation.~~
- 18 (7) ~~G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.~~
- 19 (7a) ~~G.S. 15A-145.7. Expunction of records for first offenders under 20 years of~~  
20 ~~age at the time of the offense of certain offenses.~~
- 21 (7b) ~~G.S. 15A-145.8A. Expunction of records for offenders under the age of 18 at~~  
22 ~~the time of commission of certain misdemeanors and felonies upon~~  
23 ~~completion of the sentence.~~
- 24 (7c) ~~G.S. 15A-145.9. Expunction of records of certain offenses committed by~~  
25 ~~human trafficking victims.~~
- 26 (8) ~~G.S. 15A-146(a). Expunction of records when charges are dismissed.~~
- 27 (9) ~~G.S. 15A-146(a1). Expunction of records when charges are dismissed.~~

28 (b) For any expungement granted on or after July 1, 2018, the record of a criminal  
29 conviction expunged under subdivisions (1) through (7b) of subsection (a) of this section may be  
30 considered a prior conviction and used for any of the following purposes:

- 31 (1) To calculate prior record level and prior conviction level if the named person  
32 is convicted of a subsequent criminal offense.
- 33 (2) To serve as a basis for indictment for a habitual offense pursuant to G.S. 14-  
34 7.1 or G.S. 14-7.26.
- 35 (3) When a conviction of a prior offense raises the offense level of a subsequent  
36 offense.
- 37 (4) To determine eligibility for relief under G.S. 90-96(a).
- 38 (5) When permissible in a criminal case under Rule 404(b) or Rule 609 of the  
39 North Carolina Rules of Evidence.

40 (c) For any expungement granted on or after July 1, 2018, the information maintained by  
41 the Administrative Office of the Courts, and made available under subsection (a) of this section,  
42 is prima facie evidence of the expunged conviction for the purposes provided in subsection (b)  
43 of this section and is admissible into evidence. The expungement of a conviction shall not serve  
44 as a basis to challenge a conviction or sentence entered before the expungement of that  
45 conviction.

46 (d) Notwithstanding any other provision of this Article, the Administrative Office of the  
47 Courts shall make all records of dismissals pursuant to conditional discharge maintained under  
48 G.S. 15A-151 electronically available to all prosecutors of this State.”

1  
2 **EXTENSION OF TEMPORARY AUTOMATIC EXPUNCTION PAUSE**

3 **SECTION 2.(a)** Section 1.(b) of S.L. 2022-47 reads as rewritten:

4 “**SECTION 1.(b)** This section becomes effective August 1, 2022, and expires ~~August 1,~~  
5 ~~2023-December 1, 2023.~~”

6 **SECTION 2.(b)** Section 2.(c) of S.L. 2022-47 reads as rewritten:

7 “**SECTION 2.(c)** When Section 1 of this act expires or is repealed, whichever occurs  
8 first, the Administrative Office of the Courts shall, within 180 days, expunge all dismissed  
9 charges, not guilty verdicts, and findings of not responsible that occurred during the period of  
10 time that Section 1 of this act was in effect and are eligible for automatic expunction pursuant to  
11 G.S. 15A-146(a4). Any expunction performed pursuant to this section shall be deemed to have  
12 occurred five business days after the date that the individual expunction was actually carried out  
13 by the Administrative Office of the Courts.”

14 **SECTION 2.(c)** This section is effective when it becomes law.

15  
16 **EFFECTIVE DATE**

17 **SECTION 3.** Except where otherwise provided this act is effective December 1, 2023.





# SECOND CHANCE ACT EXPUNCTION WORKING GROUP MINUTES

September 13, 2022  
10:00 am – 12:30 pm

Members in attendance: Ryan Boyce, Deputy Director, NCAOC; Marie Evitt, Government Relations Counsel, NC Sheriffs Association; Clerk Jim Mixson, Iredell County; Bill Rowe, General Counsel, NC Justice Center; Meredith Brewer, Associate Attorney, Dysart Willis; District Attorney Lorrin Freeman, Wake County; Clerk Jan Kennedy, New Hanover County; Troy Page, Assistant Legal Counsel, NCAOC; Chuck Spahos, General Counsel, Conference of District Attorneys; Glenn Gerding, Appellate Defender, Indigent Defense Services; Tonya Mims, Assistant Clerk, Wake County; Diana Powell, Second Chance Alliance, Leigh Wicclair, Senior Staff Attorney, NC Equal Access to Justice Commission; Audria Bridges, Assistant Director, SBI.

Members absent: Wayne Goodwin, Commissioner, DMV; Alex Williams, Second Chance Alliance.

## **10:00 – 10:10 am – Welcome and Introductions**

- Ryan Boyce, Deputy Director, NCAOC, welcomed members, thanked them for their participation, and provided direction on the purpose of the meeting. All present introduced themselves.

## **10:10 – 10:45 am – AOC Expunction Program**

- Emily Mehta, Research, Policy, and Planning Manager, NCAOC, presented on the topic of NCAOC's Operationalizing Automated Expunctions:
  - NCAOC's expunction unit consists of five FTEs, and noted it is manually intensive to process expunctions.
  - The Second Chance Act statutory directive, SL 2020-35, mandated the automation of expunctions of not guilty/not responsible dispositions that occurred on or after December 1, 2021.
    - This operationalized as a nightly expunction of eligible charges in ACIS, followed by the destruction of the paper file after 14 days. The 14-day period offered standard public access to the case to account for records request by necessary parties, such as bondsmen and the defendant.
  - The automation process involves COBOL to run preliminary data extracts for eligible criteria to ensure each charge qualifies under statute. This extract is loaded into the Expunction Database to remove cases from ACIS, and transmitted to all 100 counties for clerk destruction of paper files, as well as transmitted to GDAC for use in CJLEADS.
  - Suspending automated expunctions was mandated by SL 2022-47 for all eligible cases disposed on or after August 1, 2022; as well as for NCAOC to maintain a record of all charges that would have been expunged if not for the suspension.

- SL 2022-47 also states that automated expunctions will resume on August 1, 2023, and within 180 days of this date, all charges that were eligible during the suspension shall be expunged.
  - The volume of eligible cases averages 3,000 per day and NCAOC's current capacity to expunge is approximately 24,000 nightly, which leaves both technological challenges for NCAOC as well as logistical challenges for the clerks' manual process.
- The workflow for resuming automation will depend on several factors, including changes to law made by the Working Group, the volume of cases to be removed on August 1, 2023, as well as Odyssey's capacity to remove eligible cases in pilot counties following go-live.
- Other considerations include cases that are accidentally removed from ACIS. There is no automated way to reenter and must be done manually, which can prove significantly challenging if the paper record was destroyed. Additionally, if the working group develops an additional case type, e.g., "confidential," or "sealed" (as opposed to simply "active" and "expunged"), then further Odyssey configuration will be required and could prove problematic.
- Automated expunctions also do not require the notification of law enforcement agencies (LEAs), whereas the current, petition-based process does. Regardless, NCAOC developed a program that could automatically notify LEAs, but only if they choose to participate. Clerk Kennedy inquired as to who is notified now and Emily noted it was just the SBI, but several LEAs have expressed interest and are in the queue to be notified.
- General discussion of this presentation:
  - Chuck Spahos asked about when eligible, but suspended, cases are migrated to Odyssey, how are those expunged after the suspension ends. Emily responded that would need to be done via a newly developed program in Odyssey.
  - DA Freeman asked if DAs have access to auto-expunged cases in the same way they do to petition-based. Emily replied that not at this time, as the statute governing auto-expunged cases did not explicitly authorize this. However, NCAOC does have a program ready to be turned on that would provide such access to DAs should the statute be amended accordingly.
  - Bill Rowe inquired as to who has the responsibility to communicate with LEAs about expunged cases, DA Freeman replied that it is the duty of the prosecutors.

#### **10:45 am – 11:40 am – District Attorney Issues**

- Chuck Spahos, General Counsel, NC Conference of District Attorneys, presented on the issues faced by district attorneys:
  - Chuck stated he believed everyone involved worked in genuine earnest to solve the expunction process but that the General Assembly (GA) gave a strong statement in passing SL 2022-47 (suspending automation) via full bipartisan support, noting a unanimous vote in the Senate of 45-0, and a near-unanimous House vote of 110-1, with the lone dissension being unrelated to this section of the law. He noted DAs stand in firm support of the Second Chance Act, as long as some record of what occurred in public court remains preserved.
    - Troy Page noted that NCAOC's understanding of the term "expunged" in statute has always been based on the textbook definition, which means to "obliterate," "destroy," or "eliminate completely."
    - Bill Rowe inquired if the Working Group could alter the definition of "expunged" to allow for the record to be maintained but confidential, i.e. sequestered but not destroyed, perhaps akin to a "sealed" record.

- DA Freeman inquired as to whether sheriffs, magistrates, and clerks should have access to “expunged” records in the same way as prosecutors.
- Meredith Brewer recommended defendants be given a hard copy of an expunction record prior to a record being destroyed, stating without this, it can be difficult to prove an expungement to Immigration and Customs Enforcement (ICE), websites with mugshots, etc.
  - Emily responded that such proof can be obtained via form AOC-G-260, Application for Certificate of Verification of Prior Expunction, however, the applicant would need to know the file or citation number.
  - Emily also mentioned attorneys were still petitioning for expunctions on charges that were auto-expunged in order to invoke the mandated notification of LEA element. This has presented procedural issues for the NCAOC expunction unit.
- Leigh Wicclair asked if a sealed record with access by clerks, DAs, and LEAs could be prevented from reaching background check companies and outside sources.
  - Emily responded that ACIS would require significant reprogramming to allow for “quasi-public access,” or a database available to actors outside of the Judicial Branch.
  - DA Freeman advocated for access to auto-expunged records to Judicial Branch actors only, namely DAs and clerks.
    - Emily mentioned current access is limited via an individual’s bar number, thus, access to non-prosecutors (clerks, DA legal assistants, etc.) would require programming changes in CCIS-DA as well.
- Clerk Kennedy raised the issue that auto-expunged paper files must be stored separately from public record cases inside the courthouse and under lock and key. This has proven logistically difficult given the sheer volume of auto-expunged cases – 395,000 cases statewide in only eight months.
  - Clerk Mixson mentioned there are 100 different county courthouses with different physical challenges to allow for this.
  - Chuck Spahos inquired if more stringent statutory access limitations would allow the clerk to store the auto-expunged cases as they do public record cases.
- Chuck asked if all expunged cases are treated the same in Odyssey, and does Odyssey have the capability to secure or allow access to them in the same way – Emily replied in the affirmative.
- During discussion of another possible case type (“sealed,” “confidential,” etc.), Troy Page mentioned that any and all technicalities, specifics, terminology, and granularity should be given careful consideration when drafting potential legislature.
  - E.g., if clerks are given the same access as DAs, then clerks can see expunctions from other counties in the same way as DAs.
  - Troy emphasized to specifically define what a custodian of expungement records means.
  - Emily mentioned that how clerk access was defined could have significant Odyssey configuration impacts.

### **11:40 am – 12:10 pm – Clerk of Superior Court Issues**

- Clerk Jim Mixson, Iredell County, presented on behalf of the NC Conference of Superior Court Clerks to express the issues faced by clerks:
  - The biggest concern with automated expunctions is that it left no room for human error. The main issues include public access/proof of dismissal, DMV/traffic judgments, monies/bonds, evidence/records, and judgments and dispositions.
  - Access to the record for the public, Judicial Branch actors, and non-Judicial Branch actors/agencies include providing proof of expungement for the defendant, the NCDMV, out-of-state DMVs, ICE, the military, employers, landlords, custody hearings, cash bonds/bondsmen, in retrieval of seized vehicles, and evidence destruction/firearm return.
    - Issues with plea agreements, e.g., a VD pursuant to a plea agreement may be entered as a VD, but should not qualify for an expungement. Also, a deferred prosecution may result in a VD, and if auto-expunged, there is no record of this, even though the defendant may be statutorily barred from receiving another deferred prosecution.
    - Not guilty jury trials dispositions now mean the clerk must return the evidence immediately to avoid case access issues after expungement.
    - Cases that are appealed after expungement must be reentered manually.
  - Clerk Kennedy mentioned IDS and PAC fee applications may come months after a case was auto-expunged, and the clerk no longer has a case to show the court to prove the application is valid.
  - Clerk Mixson and DA Freeman stated the Second Chance Act is meant to be helpful, and the group just needs to figure out the logistics of maintaining some element of the records to avoid destroying all evidence of the case's existence.
  - Ultimately, the clerks recommend a six-month waiting period after an eligible case is disposed before it is auto-expunged.
    - Glenn Gerding stated some appealed cases have some charges dismissed and expunged, yet the superior court transcript still shows evidence of the expunged charges. He believes a six-month waiting period would be helpful for the appellate courts.
  - Clerk Mixson suggested there should be a list of positions with access to expunged cases in the same vein as there is a list for access to adoption or juvenile cases.
  - Troy Page raised the issue of the six-month waiting period previously mentioned to defense advocates.
    - Bill Rowe responded that his tentative answer was positive, but that he would have to speak with others. Bill added that the group still needs to address record retention issues beyond six-months for DAs and clerks, to which Chuck Spahos agreed.

### **12:10 – 12:30 pm – General Discussion and Next Steps**

- Ryan Boyce stated the next meeting will be in early November with a presentation by Bill Rowe and Diana Powell, as well as the by the sheriff's association if it so chooses.

### **12:30 pm – Adjourn**



# SECOND CHANCE ACT EXPUNCTION WORKING GROUP MINUTES

November 1, 2022  
10:00 am – 12:30 pm

Members in attendance: Ryan Boyce, Deputy Director, NCAOC; Marie Evitt, Government Relations Counsel, NC Sheriffs Association; Clerk Jim Mixson, Iredell County; Bill Rowe, General Counsel, NC Justice Center; Meredith Brewer, Associate Attorney, Dysart Willis; District Attorney Lorrin Freeman, Wake County; Clerk Jan Kennedy, New Hanover County; Troy Page, Assistant Legal Counsel, NCAOC; Chuck Spahos, General Counsel, Conference of District Attorneys; Glenn Gerding, Appellate Defender, Indigent Defense Services; Tonya Mims, Assistant Clerk, Wake County; Diana Powell, Second Chance Alliance, Leigh Wicclair, Senior Staff Attorney, NC Equal Access to Justice Commission; Audria Bridges, Assistant Director, SBI; Wayne Goodwin, DMV Commissioner.

Members absent: Alex Williams, Second Chance Alliance.

## **10:00 – 10:10 am – Welcome**

- Ryan Boyce, Deputy Director, NCAOC, welcomed members, thanked them for their participation. There were no objections or edits to the minutes from the September meeting.

## **10:10 – 10:45 am – Presentation by Advocacy Organizations**

- Whitley Carpenter and Diana Powell, NC Second Chance Alliance; Laura Webb, NC Justice Center, presented on their advocacy work of the Second Chance Act and the impact that it has on NC:
  - The group stated the shared values in its belief that providing a second chance to citizens is equally important as holding those responsible culpable.
  - They noted that the justice system disproportionately impacts people of color and the indigent, that there is a 25% increase in wages after expungement, and expungements themselves reduce recidivism.
  - There is a gap in expungement relief for those that are eligible but do not have access due to the petition-based system, and that there is strong support among the community for an automated expunction system.
  - They also noted that the Second Chance Act passed unanimously in both chambers of the General Assembly, and that in only eight months' time there was an increase of 395K expunctions over previous years due to the automated system.
  - The group spoke to automated processes from other jurisdictions, and how while not without their initial flaws, these systems were able to be configured in way that resolved all concerns. The group identified possible resolutions to NC-specific issues, but noted certain limitations involved:

- The courts could maintain expunged files but limit access.
- Provide Clerks authority to release a copy of the expunged file to petitioners and their attorneys.
- Implement safeguards to ensure external parties expunge their own records and prohibit access to records previously expunged.
  - Note that a “sealed” option does offer limited access to effectuate barriers of a criminal record, but the FBI still has access.
- Delay automated expunctions for a length of time, rather than that night.

#### **10:45 am – 11:00 am – Law Enforcement**

- Marie Evitt, NC Sheriff’s Association, did not have a formal presentation, but succinctly noted Sheriffs’ concerns. Sheriffs require a specific, codified process for:
  - A judge providing a signed document that proves who they should release from jail.
  - The disposal or returning of personal property involved in an expunged case.
  - Perhaps maintaining access to expunged records.
- Audria Bridges, SBI Assistant Director, noted her appreciation for a seat at the table, and looks forward to providing a voice for the SBI. She inquired what Pennsylvania does in terms of their SBI-equivalent expungement process.

#### **11:00 – 11:25 – NCAOC Presentation and Discussion of Proposed Solutions**

- Joseph Kyzer, Legislative Liaison for NCAOC, presented high-level solution ideas:
  - Lengthen the time between an eligible disposition and the automated expungement to six months.
  - Provide prosecutors with statutory authority to access automated expungements in the same manner as petition-based. Joseph noted that after ICMS pilot counties go-live, all expunction data will be housed in Odyssey.
  - Add statutory authority for DAs and Clerks to access case files of automatic and petition-based expunctions, while also allowing legacy counties to maintain paper files if requested.
    - Leigh Wicclair inquired if Clerks access would authorize them to provide records to the defendant and their attorney.
    - Clerk Mixson says juvenile case files statutes related to access are well-written and could be applied to adult expungement records.
    - Chuck Spahos noted prosecutors would like access to the dismissal history of domestic violence cases, and to make sure statute language allows this.
  - Launch AOC’s expunction notification system for local law enforcement upon resumption of automated expunctions – to include expunctions prior-to and post pause.
- General Discussion
  - Chris Brooks, Special Deputy Attorney General inquired if the DMV is notified of FTAs if the case is dismissed and expunged, or if the FTA remains on the record. He also inquired if an implied consent offense/civil matter, like a DWI charge for a CDL holder, is dismissed when the underlying charge is expunged.
  - DA Freeman noted potential implications should be considered when proposing changes. She stated perhaps they were moving away from a true expunction system to a sealed system, a change that may require drafting statutory language that may redefine expungement.
    - Drew Marsh, Senior Deputy General Counsel for NCDOT, commented that such a shift may lead to a chasm in philosophy that may be difficult to overcome.

- Chuck Spahos noted FTAs need to be expunged along with a dismissal, but a refusal to blow, or implied-consent offenses, should not be. The language must ensure that notifications to the DMV are not merely blanket dismissals of underlying civil matters, but ensure such dismissals are charge-specific.
- Laura Webb suggested automated expunctions be sealed, and petition-based expunctions be destroyed.
  - DA Freeman expressed concern about the complexity of such a system.
- Ryan Boyce noted that the group will need to focus specifically on A4 expunctions in order to have legislative solutions in time for the next GA session, preferably January 2023.
- Clerk Mixson commented that an appropriate time-delay between an eligible disposition of and the automated expunction would significantly help the community in terms of bond forfeitures and attorney fee applications.
  - Glenn Gerding mentioned he would like some access to the record for appellate attorneys regardless of whether the time-delay is four or eight months but noted if the record is destroyed after six months, this would likely solve any issues for the vast majority of appellate cases.
  - Meredith Brewer noted petition-based expungements need to happen quicker, with no time-delay, for several reasons. Ryan believes that method will still be preserved and Joseph Kyzer confirmed.

#### **11:25 – 11:30 am – Next Steps**

- Ryan Boyce stated he envisions this to be the last in-person meeting, but if further group-wide discussion is needed, a video conference could be scheduled. In the meantime, he will form a smaller group to draft an initial solution to be completed prior to Thanksgiving.

#### **11:30 am – Adjourn**



## **North Carolina Administrative Office of the Courts**

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