

FPD Expunction Pro Bono Project

North Carolina Pro Bono Resource Center
A Program of the North Carolina Equal Access to Justice Commission
ncprobono.org | [@ncprobono](https://twitter.com/ncprobono)

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NORTH CAROLINA **PRO BONO** RESOURCE CENTER

A Program of the NC Equal Access to Justice Commission
founded to increase pro bono participation in NC



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Project Goal

To provide pro bono expunction filing for federal defender and CJA attorney clients whose federal sentencing guidelines will decrease as a result of the expunction.

Overview of Process

1. FPD and CJA attorney screens clients for eligibility under NC GS 15A-145.8A. (Best Practice: Ask Meghan to prescreen)
2. FPD and CJA attorney refers eligible client to PBRC by entering client info into AirTable.
3. PBRC reviews info and matches client with pro bono attorney who drafts petition(s).
4. Pro bono attorney files petition(s) and appears at hearing(s).
5. PBRC notifies FPD and CJA attorney of expunction.

§ 15A -145.8A: Youthful Convictions prior to Dec. 1, 2019

- Class H or I felony or misdemeanor.
- Committed before Dec. 1, 2019.
- Client was 16 or 17 years old when offense was committed.
- Any active sentence, period of probation, and post-release supervision ordered has been served.
- **No outstanding restitution or civil judgments representing restitution.**
 - Often an issue with Breaking and Entering, Larceny convictions.

Restitution Issues

- Prescreen if conviction often involves restitution (e.g. B&E, Larceny, etc.)
- If client owes restitution and family can pay:
 1. If purely criminal, restitution is paid first—no need to pay entire outstanding costs
 2. If converted to civil judgment, talk to Meghan
- If client owes restitution and cannot pay: can file a Form 415 to ask the court to remit fines & fees (PBRC cannot do this step for you, but Meghan can explain it to you or to client/client's family)

Exclusions

The following offenses are excluded from expunction under 145.8A:

- All other felonies besides H, I
- All traffic offenses under Chapter 20 including DWI
- Any offense requiring registration pursuant to Article 27A of Chapter 14 (governing Sex Offender and Public Protection Registration Programs), whether or not the person is currently required to register.



Success to Date

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At least 27 expunction petitions granted resulting in:

- **Several clients avoiding an ACC designation**
 - One of these clients received probation
- **Dozens of clients shaving months - and sometimes years - off advisory guidelines**

Screening for Eligibility



Screen Pretrial Services Report **ASAP** as time is a factor!

- **Step 1:** Determine if your client has any convictions that are eligible to be expunged
- **Step 2:** Determine if your client's guidelines would be lowered because of the expunction

Screening in Action

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Adult Criminal Conviction(s)

Note: Unless otherwise indicated, the defendant was represented by counsel or waived counsel, and the supervision/institutional adjustment record is either unavailable or no violations/infractions were noted.

<u>Date of Arrest</u>	<u>Conviction/ Court</u>	<u>Date Sentence Imposed/Disposition</u>	<u>Guideline/ Points</u>	
14. 09/13/2016 (Age 16)	Assault on a Government Official or Employee (M) [REDACTED] New Hanover County Superior Court, Wilmington, NC	03/21/2017: Pled guilty 60 days custody, suspended, 12 months probation, appealed 05/10/2017: Pled guilty Consolidated with [REDACTED], 20 to 36 months custody, suspended, 30 months probation, 60 days custody 07/01/2017: Released to probation 02/05/2019: Probation revoked, 20 to 36 months custody 07/27/2019: Sentence expired 03/02/2020: Released to post-release supervision 04/15/2020: Post-release supervision revoked, 1 year custody 12/15/2020: Released	4A1.2(s)(2)	0

The offense occurred on September 13, 2016. See [REDACTED] for Supervision and Institutional Adjustment.

What to do with Expunction Order



REDACTED Expunction.oft

Why It Matters: The Final PSR

Criminal History Computation

20. The criminal convictions above result in a subtotal criminal history score of 9.
21. The defendant's criminal history points under subsections (a) through (d) total seven or more points and the defendant committed the instant offense while under a criminal justice sentence for 20CRS1234; therefore, one additional point is added. USSG §4A1.1(e).
22. The total criminal history score is 10. According to the sentencing table in USSG Chapter 5, Part A, **a criminal history score of 10 establishes a criminal history category of V.**

PART F. FACTORS THAT MAY WARRANT DEPARTURE OR VARIANCE

74. Pursuant to USSG §4A1.2(j), sentences for expunged convictions are not counted, but may be considered under §4A1.3 (Departures Based on Inadequacy of Criminal History Category (Policy Statement)). Accordingly, the court may wish to consider an upward departure from the advisory guideline range based on USSG §4A1.3 (Departures Based on Inadequacy of Criminal History Category).

Questions

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Getting Started: Required Forms

Once you've determined that a client has an eligible conviction for expunction, you'll need to have your client sign two documents before you are ready to refer them to us:

- Limited Representation Agreement
- Affidavit of Indigency (notarized) (leave county/case info blank)

Using AirTable

- Case management system
- AirTable links should always be live
- Should not encounter firewall issues (let us know if you do!)
- Master Link:
- <https://airtable.com/app1K4povCsSJD7EE/shr6wjMAD4Rh5Kkp1>

Using AirTable : 4 Points of Contact

- 1) Signing up for the project.
- 2) Entering client information.
 - 1) Initial Input
 - 2) Sentencing updates if applicable
- 3) Notice to referring attorney that expunction petition has been filed.
- 4) Notice to referring attorney that signed expunction order is available to download.

Entering Your Information

- Link: <https://airtable.com/app1K4povCsSJD7EE/shrcHQhS2lxxrw4BYO>
- You will NOT be able to submit a client to us until you have signed up for the project.
- Once you sign up, you will receive a link to a website that has all the documents and link you need.

Entering Client Information

- Link: <https://airtable.com/shrQOXwuoWy25oDzu>
- Please enter as much information as you can; the questions are fields in the expunction petition
- Find yourself in the list of Federal Public Defenders and CJA attorneys at the bottom of the form to link the client to you (so you'll get notifications!)
- Will also need to upload a scanned copy of our limited representation agreement and the notarized affidavit of indigency.

Updating Sentencing Date

To update your client's sentencing date if it changes after you refer your client: <https://airtable.com/shrD0JMV5wFf6gA6o>

Notification of Petition Filing

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noreply+automations@airtableemail.com

✓ Meghan Martie

PBRC-Raise the Age Expunction Petition Filed



If there are problems with how this message is displayed, click here to view it in a web browser.

Hello,

The expunction petition for Jane Doe has been filed in Wake County.

We will notify you when we have a signed petition back.

Sent via Automations on  Airtable

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Expunction Order Ready to Download

You will receive an email when the petitions have been signed and returned.

Typically, only electronic version is provided, but we can mail a hard copy if you need it.

Example: <https://airtable.com/app1K4povCsSJD7EE/shrHlrNQ4ccKvvBEy>

(This link is NOT universal. Use the link in the email you receive.)



QUESTIONS?

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