

This document is the result of 5-7 months of meetings and research by the 10 State Reentry Council Collaborative (SRCC) workgroups and presents draft recommendations. The SRCC welcomes your comments and feedback on these draft recommendations. **Note: Budget numbers in these recommendations are estimates only and have not been verified.**

All feedback will be reviewed and considered. Once the final recommendations are approved by the SRCC, they will be submitted to the NC General Assembly and the Office of Governor Roy Cooper.

In submitting your feedback, please include the following information:

- Your name
- Organization (if applicable)
- Workgroup and recommendation to which your feedback applies

We welcome any feedback submitted prior to the deadline, but all comments must be emailed to Irene Lawrence at irene.lawrence@ncdps.gov by 5pm on October 31st.

SRCC Legal Workgroup Recommendation #1

RECOMMENDATION SUMMARY

Improve ability of persons who are incarcerated to re-enter with no pending cases or outstanding failures to comply with prior judgments, including failures to comply for failure to pay a fine, fee or court cost.

BACKGROUND

At times, individuals who are incarcerated for a conviction in one county complete their sentence with criminal matters still pending in other counties, including outstanding orders for arrest for failure to comply with disposed judgments. These are often driving offenses or other minor misdemeanors. This may include unpaid fines on disposed traffic matters that may or may not have an accompanying order for arrest.

These cases are not cases that, absent an Order for Arrest (OFA), would result in confinement, or if so, often result in short sentences. In the case of a failure to comply, failure to pay monies can result in the suspension of a driver's license and additional steps to restore driving privileges post-release. If the resolution of any of these outstanding matters results in an active sentence (or revocation of a previously ordered sentence in the case of a failure to comply), and that occurs while the person is serving a prison sentence, concurrent time is common. However, if the person completes an active sentence, and returns to his or her community without resolving these matters, he or she will inevitably be re-arrested for that minor offense or failure to comply that did not get handled while the person was in prison, and the cycle of incarceration continues.

Another related area of concern is that the North Carolina Department of Public Safety (NCDPS) will learn of pending minor charges for a person who is incarcerated, bring the matter to the attention of the county officials in which the charge is pending, but despite their early notification, nothing will happen (the warrant is either outstanding and unserved or the person is not brought to court in the county) until the very end of the person's sentence. In this situation, not only may that person face an additional or extended period of incarceration when they would have otherwise been released, but the transition planning and work of NCDPS may be interrupted and wasted on a now unreliable release date.

RECOMMENDATION

1. Improve IT and communications such that outstanding criminal matters and failures to comply, including for monies, are identified when a person initially comes in to NCDPS custody and create periodic checks throughout the incarceration or an alert system to notify NCDPS of any newly entered orders for arrest or failures to comply with orders for arrest.
2. Create statutory standards for a global, tiered approach to disposition of minor matters for persons incarcerated. For example, a person serving a sentence of at least 6 months active require the District Attorney (DA) to dismiss any pending Class 2 or 3 misdemeanor (exception: a victim for an offense involving personal injury, e.g. assault, is

opposed with the limitation that any such case may be dismissed after a good faith effort to contact the victim). Class 1 and A1 misdemeanors may be handled by plea, remotely, for concurrent sentences, with counsel appointed in the county of disposition. Failures to pay fines on disposed traffic matters are to be submitted to the court for remission of said fine if a person is serving a sentence of 30 days or more, for example.

The SRCC Legal workgroup recommends that the legislature allocate funds to Administrative Office of the Courts (AOC) and NCDPS to develop an IT solution to permit seamless and automatic communication between databases so that, upon entry into NCDPS custody, all outstanding criminal and traffic matters are identified, including failures to comply and outstanding traffic fines without orders for arrest.

The SRCC Legal workgroup recommends that the legislature amend N.C. Gen. Stat. §15A-301.1 (o) to include all outstanding failures to comply (including minor traffic offenses which are disposed but include an unpaid fine without orders for arrest) and that the legislature amend N.C. Gen. Stat. §148-10.5 to add all outstanding failures to comply here as well.

The SRCC Legal workgroup further recommends that the legislature, in conjunction with the Conference of DAs, Public Defenders, and NCDPS create a global, tiered approach to disposition of cases.

STAKEHOLDERS

NCDPS, District Attorneys, Public Defenders, judges, NC Department of Justice, US Probation

BUDGET

Still under development

TYPE OF ACTION

Legislative

TIMELINE

Long-term

SRCC Legal Workgroup Recommendation #2

RECOMMENDATION SUMMARY

Increase employment and housing opportunities for persons reentering our communities after a period of incarceration by supporting innovative local court programs that will expand opportunities for criminal record expunction, access to certificates of relief (COR), and restoration of suspended driver's licenses. In so doing, establish a system (either pre- or post-release) for regular communication and referrals between North Carolina Department of Public Safety (NCDPS) reentry coordinators or mobile DMV units working within the prison and the local court program to enable relief in the months preceding release from prison or immediately thereafter.

BACKGROUND

One local municipality is currently developing an innovative court program that will identify persons eligible for expunction, certificates of relief (COR) and driver's license restoration as they dispose of their cases in the criminal justice system (or by direct referral from other agencies and community groups) and refer them to a network of providers within the community to assist them with obtaining the relief needed. This is the City of Durham. The program will be administered as a partnership between the City of Durham, Durham Courts and several community partners who will provide legal assistance, including area law schools and non-profit organizations. The program will also have attorneys and staff co-located in the courthouse, in part, to receive those referred to the program from the courtroom and other court and community agencies.

In Durham alone, tens of thousands of Durham residents currently have records eligible for expungement or suspended driver's licenses due to reasons other than a history of DWI (Driving While Impaired). It is common that individuals return home from prison without a driver's license. Currently, the DMV is sending mobile units into prisons to help individuals obtain state issued identification, renew or get a driver's license. However, this program is not designed to address license suspensions that may stem from old FTA's (failures to appear) or FTP's/FTC's (failures to pay/comply). Additionally, under a new law that will go into effect at the end of this year, an estimated 90 percent of charges will meet eligibility requirements for COR. Certificates of relief can greatly assist with housing for those reentering communities and can, for example, shelter a landlord from liability for deciding to lease to someone with a criminal record.

This type of legal work is crucial to increasing employment and opportunities in housing, education and other realms of life for justice-involved residents and their families, and if those serving sentences in prison could be provided with this legal assistance or a referral to receive assistance upon returning to their local community in NC, this could have a tremendous impact. A simple referral would mitigate the delay in services that can often have a domino effect on employment, then housing and so on.

RECOMMENDATION

1. Dedicates NCDPS resources to partnering with court programs like the one in Durham [to be called, “The DEAR (Durham Expunction and Restoration) Program”] and/or DMV mobile units to develop a model for future partnerships with any similar programs in other cities across NC.
2. Establish either a pre- or post-release referral system to connect individuals with eligible criminal records for expunction and individuals with suspensions for FTAs and/or FTPs to the DEAR (or similar) program for assistance with driver’s license restoration.
 - a. Pre-release referral option: Develop an internal NCDPS process for reviewing the criminal (and traffic) records of any incarcerated individual to determine eligibility for expunction, COR or driver’s license restoration who first elects to participate in said reviewal with the anticipation of receiving a referral to a program like Durham’s to provide legal relief either prior to release or shortly thereafter. Should record reviewal not be possible within the Division of Adult Correction by NCDPS staff or through the DMV mobile units, then instead develop a referral mechanism to refer parties to programs in the city they will be reentering (like, The DEAR program) to provide the applicable relief either prior to or immediately after release. Develop a plan of identifying all DEAR-like programs across North Carolina able to receive referrals.
 - b. Post-release referral option: The DEAR (or similar) program could work with NCDPS during post-release supervision to review criminal and driving records for returning residents and identify those who may be eligible for restoration assistance
3. Create an additional civil penalty for third party data providers that continue to disseminate information on expunged offenses in violation of N.C. Gen. Stat. §15A-152.
4. Develop an educational campaign for employers, landlords and educational programs on the legal effect of certificates of relief (COR) relieving them of liability for employing, leasing or accepting someone into an educational program with a criminal record who receives a COR consistent with N.C. Gen. Stat. §15A-173.5.
5. Amend expunction statutes (N.C. Gen. Stat. § 15A-145.5) to allow for expunctions of non-violent felonies or misdemeanors where a person possesses a prior conviction for not more than three minor misdemeanors like, simple worthless check, second degree trespass, disorderly conduct, etc.
6. Add a legislative amendment to 15A-173.2(b)(1) to remove the 12-month waiting period etc. for COR eligibility if an inmate can show a period of good behavior while incarcerated and/or successful completion of a certain prison program (e.g. educational, substance misuse, mental health, etc).

Legislative Action:

The SRCC Legal workgroup recommends that the legislature allocate funds to the Administrative Office of the Courts (AOC) and NCDPS to develop a mechanism to search criminal (and traffic) records for those serving sentences in prison in order to refer them for expunction, COR or driver’s license restoration should they elect to participate.

The SRCC Legal workgroup recommends that the legislature amend N.C. Gen. Stat. § 15A-145.5 to allow for expunctions of non-violent felonies or misdemeanors where a person possesses a prior conviction for not more than three minor misdemeanors like, simple worthless check, second degree trespass, disorderly conduct, etc.

The SRCC Legal workgroup recommends that the legislature amend N.C. Gen. Stat. §15A-146 to allow for automatic expunction of charges with a dismissed or not guilty disposition. The SRCC Legal workgroup recommends that the legislature enact a statute creating an additional civil penalty for third party data providers that continue to disseminate information on expunged offenses in violation of N.C. Gen. Stat. §15A-152.

STAKEHOLDERS

AOC, DPS, Local court expunction programs, Clerks of Court, District Attorneys (DAs), Public Defenders, Judges, NC Department of Justice (DOJ), US Probation

BUDGET

Still under development

TYPE OF ACTION

Legislative, Programmatic/Policy

TIMELINE

Long-term

SRCC Legal Workgroup Recommendation #3

RECOMMENDATION SUMMARY

Improve ability of persons who are incarcerated to re-enter with no orders for arrests involving child support cases.

BACKGROUND

Noncustodial parents may face incarceration for failure to pay child support through civil contempt proceedings. At times, individuals who are incarcerated for a criminal conviction in one county may have orders for arrests arising out of child support matters. A defendant can have an order arrest issued in two scenarios. In Durham County, the defendant has missed a court date. Oftentimes, the defendant signed his order (the judge signs as well and that becomes the order of the court) that continues his/her case to the next date. In this order, it indicates that if the defendant misses his/her court date an order for arrest will be issued. If the defendant misses this court date and is served with an order of arrest, then there is a cash bond set for the defendant that he/she must pay to be released from incarceration.

The second scenario involves when a defendant has entered in a consent agreement to pay purge payments. For example, this is a typical judgment that a judge orders in child support cases after the defendant consents to being in willful violation of not pay his child support: 90-day sentence in jail is stayed provided the defendant pays a total purge amount of \$750 which is to be paid the following manner: \$250 on or by October 24th, \$250 on or by November 29th and \$250 on or by December 28th. If the defendant misses one of these purge payments, then an order for arrest will be issued against him and the total amount of what he hasn't paid pursuant his/her agreement becomes due. So, if the defendant misses one payment of \$250, then it all becomes due.

N.C.G.S 50-13.10 states that no child support payments become arrears if a defendant is incarcerated and is not on work release and has no resources to make the child support payment.

Oftentimes, when an individual is incarcerated and he/she is under a current order to pay child support any missed payments will accrue becomes past due; these pay due amounts are termed arrearages. However, provided that the "supporting party" or the incarcerated person who owes child support payment and who is not on work release typically cannot pay because they are incarcerated. However, oftentimes once a defendant is released from incarceration, he or she might be rearrested because they missed a court date due to being in custody. Moreover, the arrears have accrued in during a period where they clearly cannot work.

There are many times where an individual must come back to court several times so that their child support case can be audited by NC Child Support Services to determine the period that they were incarcerated to adjust their arrears balance.

If the local child support offices can be alert electronically that these individuals were incarcerated at the time of the issuance of an OFA, then the Child Support Enforcement agency will be proactive in submitting requests to Judges to not have individuals arrested when they missed court dates due to incarceration.

RECOMMENDATION

1. Improve IT and communications such that outstanding child support OFAs are identified when a person initially comes in to North Carolina Department of Public Safety (NCDPS) custody. Also, to present a certified letter indicating the period of incarceration upon the release from NCDPS to give to their local child support office to expedite the adjustment of arrears.
2. Create a database notification from NCDPS to all local child support offices alerting them about the release and periods of incarceration so that the adjustment can be made prior to the request of motion for a modification having to be requested.
3. Many states recognize that no support can be paid when a noncustodial parent is incarcerated; and have established programs to encourage full compliance with child support orders, both before and as a part of the civil contempt process. These programs include examining child support orders to reflect realistic amounts given the individual's circumstances and diversion programs to reduce incarceration rates and increase child support payments.

The SRCC Legal workgroup recommends that the legislature allocate funds to the Administrative Office of the Courts (AOC) and NCDPS and Child Support Enforcement Offices to develop an IT solution to permit seamless and automatic communication between databases so that, upon entry into NCDPS custody, all outstanding OFAs for outstanding child support cases are identified and/or to assist and expedite the adjustment any arrears.

STAKEHOLDERS

NCDPS, Child Support Enforcement Offices, Judges, NC Department of Justice (DOJ), US Probation

BUDGET

Still under development

TYPE OF ACTION

Legislative

TIMELINE

Long-term