

RRC STAFF OPINION

PLEASE NOTE: THIS COMMUNICATION IS EITHER 1) ONLY THE RECOMMENDATION OF AN RRC STAFF ATTORNEY AS TO ACTION THAT THE ATTORNEY BELIEVES THE COMMISSION SHOULD TAKE ON THE CITED RULE AT ITS NEXT MEETING, OR 2) AN OPINION OF THAT ATTORNEY AS TO SOME MATTER CONCERNING THAT RULE. THE AGENCY AND MEMBERS OF THE PUBLIC ARE INVITED TO SUBMIT THEIR OWN COMMENTS AND RECOMMENDATIONS (ACCORDING TO RRC RULES) TO THE COMMISSION.

AGENCY: Private Protective Services Board (PPSB)

RULE CITATION: 14B NCAC .0203, .0706, .0806, .0902, .0904, .0910, .0911, .1306

RECOMMENDATION DATE: March 24, 2026

RECOMMENDED ACTION:

- No action
- Approve, but note staff's comment
- X Object, based on:
 - X Lack of statutory authority
 - Unclear or ambiguous
 - Unnecessary
 - Failure to comply with the APA
- Extend the period of review

COMMENT:

These rules raise a novel issue related to a Board's authority to compel disclosure of expunged criminal offenses.

Specifically, that issue arises in the following subsections: 14B NCAC 16 .0203(b)(2) (lines 18-19) and (d)(4) (lines 1-2); 14B NCAC 16 .0706(b)(2) (lines 18-19) 14B NCAC 16 .0806(b)(2) (lines 19-20); 14B NCAC 16 .0902(b)(3) (line 20); 14B NCAC 16 .0904(b)(2) (line 20); 14B NCAC 16 .0910(b)(3) (line 20); 14B NCAC 16 .0911(b)(4) (line 22); 14B NCAC 16 .1306(b)(1) (lines 16-17).

A recent session law, S.L. 2025-51, in Part III, titled "Enhance Background Check Abilities of Private Protective Services Board and Security Systems Licensing Board", makes changes related to the PPSB's ability to consider criminal convictions. Section 3.(b) reads as follows, adding the underlined text:

*"§ 15A-151. Confidential agency files; exceptions to expunction.
(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:*

...

Seth Ascher
Commission Counsel

(10) Upon request of the North Carolina Private Protective Services Board or the North Carolina Security Systems Licensing Board, if the criminal record was expunged under this Chapter for licensure or registration purposes only."

The plain text of this amendment authorizes the Administrative Office of the Courts to provide records of expunged convictions to PPSB but does not speak to a requirement for applicants to disclose expunged convictions.

G.S. 15A-153, which was not modified by S.L. 2025-51, limits a state agency's ability to request disclosure of expunged criminal convictions as follows:

(d) State or Local Government Agency, Official, and Employee Inquiry Regarding Disclosure of Expunged Arrest, Criminal Charge, or Conviction. - Agencies, officials, and employees of the State and local governments who request disclosure of information concerning any arrest, criminal charge, or criminal conviction of the applicant shall first advise the applicant that State law allows the applicant to not refer to any arrest, charge, or conviction that has been expunged. An applicant need not, in answer to any question concerning any arrest or criminal charge that has not resulted in a conviction, include a reference to or information concerning charges or convictions that have been expunged. Such application shall not be denied solely because of the applicant's refusal or failure to disclose information concerning any arrest, criminal charge, or criminal conviction of the applicant that has been expunged.

In sum, one statute, G.S. 15A-151 explicitly gives the PPSB authority to obtain records of expunged convictions from the Administrative Office of the Courts. Another statute, G.S. 15A-153 places limits on a state agency's ability to require applicants to disclose expunged convictions. As a result, while PPSB has authority to consider and deny licensure based on expunged convictions and to obtain records showing expunged convictions, they appear to lack the authority to compel an applicant to disclose expunged convictions.

Therefore, I recommend that the Commission object to the above captioned rules for lack of statutory authority pursuant to G.S. 150B-21.9 (a)(1).