

Expanded Expunction Opportunities

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In [S.L. 2017-195](#) (S 445), the General Assembly made several changes to North Carolina's expunction laws. Most importantly, the act expands the availability of relief in two ways: it reduces the waiting period to expunge older nonviolent felony and misdemeanor convictions, and it allows a person to obtain an expunction of a dismissal regardless of whether the person received any prior expunctions. Because the act states that it applies to petitions filed on or after December 1, 2017, the revised statutes apply to offenses, charges, and convictions that occur before, on, or after December 1, 2017. The tradeoff for this expansion is that information about expunctions, maintained by the Administrative Office of the Courts and otherwise confidential, is available for review by the prosecutor and useable to calculate prior record level at sentencing if the person is convicted of a subsequent offense. This part of the act applies to expunctions granted on or after July 1, 2018. The act makes other changes to create more consistency and uniformity in the expunction process.

Reduction of waiting period. G.S. 15A-145.5 has allowed a person to expunge older felony and misdemeanor convictions if the offense was nonviolent as defined in the statute, 15 years have elapsed, and person satisfies the other statutory conditions. The act amends G.S. 15A-145.5(c) to reduce the 15-year waiting period to 10 years for nonviolent felonies and to 5 years for nonviolent misdemeanors. The remaining criteria for an expunction remain the same.

The act does not clarify an ambiguity about when this waiting period begins. The amended statute states that the petition may not be filed earlier than 10 years after the date of conviction for a nonviolent felony and 5 years for a nonviolent misdemeanor or when any sentence has been completed, whichever occurs later. This language appears to mean that a person must wait until (i) 5 or 10 years have passed from the date of conviction depending on whether it is for a misdemeanor or felony or (ii) the person completes the terms of his or her sentence, whichever occurs later. Thus, a person always must wait the specified number of years from the date of conviction before petitioning for an expunction. If the person has not completed his or her sentence within that period, he or she must wait any additional time it takes to complete the sentence. The provision does not require the person to wait an additional 5 or 10 years after completing his or her sentence, which would render the conviction date meaningless since sentences always end on or after the conviction date. For a further discussion of this issue, see John Rubin, [Relief from a Criminal Conviction \(hereinafter Relief Guide\)](#), [Older Nonviolent Misdemeanor and Felony Convictions](#) (UNC School of Government 2016).

Elimination of limit on expunctions of dismissals. G.S. 15A-146 has allowed a person to expunge dismissals by the court or prosecutor and findings of not guilty if the person has not previously obtained an expunction under various statutes and satisfies other statutory conditions, such as not having been convicted of a felony. The act amends G.S. 15A-146 to eliminate the prior expunction bar. Three subsections of G.S. 15A-146 allow expunctions without regard to whether the person has obtained a previous expunction.

- Amended subsection (a) continues to authorize expunction of dismissals.
- Amended subsection (a1) allows expunction of multiple dismissals and eliminates the requirement that the offenses be alleged to have occurred within the same 12-month period. Further, the amended language reinforces that a person may obtain an expunction of a dismissed charge even if he or she is convicted of misdemeanors in the same case. This has been the law because a misdemeanor conviction, whether it occurs

before, at the same time, or after a dismissal, does not bar expunction of a dismissal. See Relief Guide, [Dismissal or Finding of Not Guilty of Misdemeanors, Felonies, and Certain Infractions](#). Amended subsection (a1) reinforces this result because it states that if a person is charged with multiple offenses and the charges are dismissed, the person is entitled to expunge each of the dismissed charges (assuming the other requirements are met); previously, the subsection referred to “all” charges being dismissed.

- New subsection (a2) allows expunction of findings of not guilty, which previously were covered by subsection (a). Not guilty findings appear to have been moved to a separate subsection because they are not subject to the new reporting requirements to prosecutors, discussed below.

Elimination of the prior expunction bar for dismissals and not guilty findings also addresses a potentially odd result under G.S. 15A-145.5. That statute has allowed expunction of multiple convictions of older nonviolent misdemeanors and felonies from the same session of court, which are now subject to the shorter waiting period discussed above. But, the statute does not expressly allow expunctions of dismissals even if related to the convictions being expunged. And, under the previous version of G.S. 15A-146, a person may not have been able to obtain an expunction of the dismissed charge if he or she received an expunction of a conviction under G.S. 15A-145.5 because a prior expunction barred relief. Now, a person may obtain an expunction of a conviction under G.S. 15A-145.5 and an expunction of a dismissal under G.S. 15A-146, whether related or unrelated to the conviction, because the prior expunction bar has been eliminated. G.S. 15A-146 continues to bar expunctions if a person has a felony conviction, but an expunged conviction, because it has been expunged, should not count as a conviction except for calculating the person’s prior record level, discussed below. See Relief Guide, [Expunged Convictions](#).

Sharing of expunction with prosecutor and use for prior record level for subsequent offenses. New G.S. 15A-151.5 allows prosecutors to access and use most expunctions to determine a person’s prior record level for subsequent offenses if the record was expunged on or after July 1, 2018. Although people may obtain expunctions under the new provisions beginning December 1, 2017, the later effective date of this requirement appears to be for the purpose of giving the Administrative Office of the Courts (AOC) more time to implement it. The new statute applies to expunctions under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, 15A-145.5, 15A-145.6, 15A-146(a), and 15A-146(a1). It does not apply to expunctions of not guilty findings under new G.S. 15A-146(a2).

Subsection (a) of new G.S. 15A-151.5 requires the AOC to make the confidential files it maintains of the above expunctions available electronically to all prosecutors in the State. Under amended G.S. 15A-151(a), the confidential files consist of the names of people who received expunctions and the granted petitions. (G.S. 15A-151 also continues to allow law enforcement entities to obtain these files for expunctions under G.S. 15A-145.4, 15A-145.5, and 15A-145.6 for certification and employment purposes.) Subsection (b) of G.S. 15A-151.5 authorizes the use of expunged criminal records, other than expunged dismissals under G.S. 15A-146, to calculate a person’s prior record level if the person is convicted of a subsequent criminal offense. The act makes conforming changes to other expunction statutes to reflect this authority. Subsection (c) of G.S. 15A-151.5 provides that the information provided by the AOC is prima facie evidence of an expunged conviction for purposes of calculating prior record level and is admissible in evidence at a subsequent criminal sentencing hearing.

Other than this access and use, the effect of an order of expunction remains the same under North Carolina law. The person for whom an order has been entered is restored to the status he or she occupied before the criminal proceeding and may not be held to have given a false statement by not disclosing the expunged matter. See, e.g., G.S. 15A-145.5(c), (d). Agencies must purge their records of all entries of the case. See, e.g., G.S. 15A-150(b). The previous version of this statute stated that agencies must expunge rather than purge their records, but the change in terminology does not appear to make a legal difference.

Notice by clerk. Amended G.S. 15A-150 requires the clerk of superior court to file granted petitions and orders with the AOC and to provide a certified copy of an order of expunction to the person receiving it as well as to agencies required to expunge their records. The amended statute clarifies that the clerk should send the orders to the Combined Records Section of the Department of Public Safety and to the State Bureau of Investigation, which is then responsible

for forwarding the orders to the Federal Bureau of Investigation. The act also amends G.S. 15A-146, as well as G.S. 15A-147 (expunction based on identity theft or mistaken identity) and G.S. 15A-148 (expunction of DNA records), to require that a petition for expunction be on a form approved by the AOC, presumably to make the records submitted by the clerk to the AOC more uniform. In some instances, the AOC forms seek to resolve inconsistencies and ambiguities in the expunction laws. The requirement that AOC forms be used does not preclude a petitioner from arguing and a judge finding that the expunction laws may warrant greater relief.

Access to expunction information by petitioner. In addition to directing the clerk of court to provide the petitioner with a certified copy of an order granting an expunction, the act provides in revised G.S. 15A-151(a)(2) that petitioners have the right to obtain, on request, confirmation of discharges and expunctions from the AOC. Previously, this right was keyed to G.S. 15A-152, which allowed (and continues to allow) a petitioner to obtain a certificate from the AOC verifying an expunction before filing an action against a private entity in the record check business that has failed to delete expunged information.

Record check process. The act also amends the expunction statutes to clarify the responsibilities of the clerk of court for record checks. The amended statutes state that the petitioner's application for a record check is filed with the clerk of court and the clerk is responsible for forwarding the request to the Administrative Office of the Courts (to check for prior expunctions) and the Department of Public Safety (to check for prior criminal record). See G.S. 15A-145(a)(4), 15A-145.1(a)(4a), 15A-145.2(3a), 15A-145.3(a)(3a), 15A-145.4(c)(4), 15A-145.5(c)(4), 15A-146(c).

Venue. Last, the act amends several statutes to clarify that a petition for an expunction under the applicable statute must be filed in the court of the county of conviction. See G.S. 15A-145(a), 15A-145.1(a), 15A-145.4(b), 15A-145.5(c), 15A-145.6(b). Likewise, the act amends statutes on expunction of a discharge and dismissal to require that the petition be filed in the court of the county where the defendant was charged. See G.S. 15A-145.2(a), 15A-145.3(a).