

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

FILED SENATE
Apr 2, 2019
S.B. 562
PRINCIPAL CLERK

S

D

SENATE BILL DRS45209-ML-81

Short Title: The Second Chance Act.

(Public)

Sponsors: Senators Britt, Daniel, and McKissick (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED
AN ACT TO MAKE VARIOUS REVISIONS TO THE EXPUNCTION LAWS OF THIS
STATE.

The General Assembly of North Carolina enacts:

**PART I. JUVENILE EXPUNCTIONS FOR OFFENSES COMMITTED BETWEEN
NOVEMBER 30, 2015, AND THE EFFECTIVE DATE OF THE LEGISLATION
KNOWN AS RAISE THE AGE**

SECTION 1.(a) Article 5 of Chapter 15A of the General Statutes is amended by
adding a new section to read:

**"§ 15A-145.8 Expunction of records for offenders under the age of 18 at the time of
conviction of certain misdemeanors and felonies upon completion of the
sentence.**

(a) A person convicted of a misdemeanor or Class H or I felony, other than a traffic
offense, committed on or after the person's sixteenth birthday, but before the person's eighteenth
birthday, may file a petition for expunction in the trial court upon completion of any sentence or
period of probation imposed and payment of any restitution ordered. The court shall hold a
hearing and upon finding that (i) the offense was committed on or after the person's sixteenth
birthday, but before the person's eighteenth birthday, (ii) any sentence or period of probation was
completed, and (iii) the person has no outstanding restitution orders or civil judgments
representing amounts ordered for restitution against the person, the court shall order that the
person be restored, in the contemplation of the law, to the status the person occupied before such
conviction. A person convicted of multiple offenses shall be eligible to have those convictions
expunged pursuant to this section.

(b) Nothing in this section shall be interpreted to allow the expunction of (i) any offense
involving impaired driving as defined in G.S. 20-4.01(24a) or (ii) any offense requiring
registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the
person is currently required to register.

(c) Any petition for expungement under this section shall be on a form approved by the
Administrative Office of the Courts and shall be filed with the clerk of superior court in the
county where the person was convicted. Upon order of expungement, the clerk shall forward the
petition to the Administrative Office of the Courts.

(d) No person as to whom such order has been entered shall be held thereafter under any
provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of
that person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or
response to any inquiry made of the person for any purpose.



* D R S 4 5 2 0 9 - M L - 8 1 *

(e) The court shall also order that the conviction be expunged from the records of the court. The court shall direct all law enforcement agencies, the Division of Adult Correction and Juvenile Justice of the Department of Public Safety, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(f) No filing fee shall be required to file a petition under this section, and the costs of expunging the records shall not be taxed against the petitioner."

SECTION 1.(b) This section is effective December 1, 2019, and applies to offenses committed on or before that date.

PART II. PROSECUTOR ACCESS TO EXPUNGED FILES

SECTION 2.(a) G.S. 15A-151.5(a) reads as rewritten:

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

- (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; expunction of certain other misdemeanors.
- (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.
- (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain drug offenses.
- (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses.
- (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
- (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- (7a) G.S. 15A-145.7. Expunction of records for first offenders under 20 years of age at the time of the offense of certain offenses.
- (7b) G.S. 15A-145.8. Expunction of records for offenders under the age of 18 at the time of conviction of certain misdemeanors and felonies upon completion of the sentence.
- (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed."

SECTION 2.(b) This section is effective December 1, 2019.

PART III. STREAMLINE EXPUNCTIONS FOR CHARGES NOT RESULTING IN CONVICTION

SECTION 3.(a) G.S. 15A-146 reads as rewritten:

"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(a) Dismissal Prior to December 1, 2019. – If any person is charged with a crime, either a misdemeanor or a felony, or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, infraction, and the charge is dismissed, dismissed prior to December 1, 2019, that person or a prosecutor may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to his—that person's apprehension or trial. The court shall hold a hearing on the petition and, upon finding that the

1 person had not previously been convicted of any felony under the laws of the United States, this
2 State, or any other state, Upon finding that the charge was dismissed, the court shall order the
3 expunction. ~~No person as to whom such an order has been entered shall be held thereafter under~~
4 ~~any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false~~
5 ~~statement or response to any inquiry made for any purpose, by reason of his failure to recite or~~
6 ~~acknowledge any expunged entries concerning apprehension or trial.~~

7 (a1) Multiple Dismissals. – ~~Notwithstanding subsection (a) of this section, if~~ If a person is
8 charged with multiple offenses and the any charges are dismissed, then a person may petition to
9 have each of the dismissed charges expunged. The court shall hold a hearing on the petition. ~~If~~
10 ~~the court finds that all of the person had not previously been convicted of any felony under the~~
11 ~~laws of the United States, this State, or any other state, charges were dismissed,~~ the court shall
12 order the expunction. If the court finds that all of the charges were not dismissed, the court shall
13 hold a hearing and may order the expunction of any of the dismissed charges.

14 (a2) Finding of Not Guilty Prior to December 1, 2019. – If any person is charged with a
15 crime, either a misdemeanor or a felony, or an ~~infraction under G.S. 18B-302(i) prior to~~
16 ~~December 1, 1999, infraction,~~ and a finding of not guilty or not responsible is ~~entered,~~ entered
17 prior to December 1, 2019, that person or a prosecutor may petition the court of the county where
18 the charge was brought for an order to expunge from all official records any entries relating to
19 apprehension or trial of that crime. The court shall hold a hearing on the petition and upon finding
20 that the person had not previously been convicted of any felony under the laws of the United
21 States, this State, or any other state, Upon determining that a finding of not guilty or not
22 responsible was entered, the court shall order the expunction. ~~No person as to whom such an~~
23 ~~order has been entered shall be held thereafter under any provision of any law to be guilty of~~
24 ~~perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for~~
25 ~~any purpose, by reason of failure to recite or acknowledge any expunged entries concerning that~~
26 ~~crime.~~ If a person is charged with multiple offenses and findings of not guilty or not responsible
27 are made on charges, then a person or a prosecutor may petition to have each of the charges
28 disposed by a finding of not guilty or not responsible expunged. ~~The court shall hold a hearing~~
29 ~~on the petition. If the court finds that the person had not previously been convicted of any felony~~
30 ~~under the laws of the United States, this State, or any other state, Upon determining that findings~~
31 ~~of not guilty or not responsible were entered,~~ the court shall order the expunction.

32 (a3) Effect of Expunction. – No person as to whom ~~such an order has been entered by a~~
33 court or by operation of law under this section shall be held thereafter under any provision of any
34 law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to
35 any inquiry made for any purpose, by reason of ~~his the person's~~ failure to recite or acknowledge
36 any expunged entries concerning apprehension or trial.

37 (a4) Dismissal on or After December 1, 2019. – If any person is charged with a crime,
38 either a misdemeanor or felony, or an infraction, and the charge is dismissed on or after December
39 1, 2019, the dismissed charge is expunged by operation of law. The prosecutor or other judicial
40 officer who ordered the dismissal shall provide notice of the dismissal and expunction to the
41 clerk.

42 (a5) Finding of Not Guilty on or After December 1, 2019. – If any person is charged with
43 a crime, either a misdemeanor or felony, or an infraction, and a finding of not guilty or not
44 responsible is entered on or after December 1, 2019, the court that entered the finding shall order
45 the expunction from all official records any entries relating to apprehension or trial of that crime.
46 If a person is charged with multiple offenses and findings of not guilty or not responsible are
47 made on charges, then the court that entered the findings shall order the expunction from all
48 official records any entries relating to apprehension or trial of those crimes.

49 (a6) Hearing. – Except as otherwise specifically provided in this section, a court may grant
50 a petition for expunction under this section without a hearing.

51 ...

(c) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of ~~expungement, expungement by a court or by operation of law~~, the clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150 and forward the petition to the Administrative Office of the Courts.

...."

SECTION 3.(b) G.S. 15A-150(b) reads as rewritten:

"(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, the clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to (i) all of the agencies listed in this subsection and (ii) the person granted the expunction, unless the expunction was granted pursuant to subsections (a4) and (a5) of G.S. 15A-146. An agency receiving an order under this subsection shall purge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
- (4) The Department of Public Safety, Combined Records Section.
- (5) The State Bureau of Investigation."

SECTION 3.(c) By February 1, 2020, the Department of Public Safety, in conjunction with the Department of Justice and the Administrative Office of the Courts, shall jointly develop and submit a report to the Joint Legislative Oversight Committee on Justice and Public Safety on recommendations and the costs involved to automate the expunction process for all State agencies with records subject to expunction orders and ensure the efficacy of the record expunction.

SECTION 3.(d) Subsections (a) through (a2) and (a6) of G.S. 15A-146, as amended by subsection (a) of this section, becomes effective December 1, 2019, and applies to petitions filed on or after that date. The remainder of subsection (a) of this section becomes effective December 1, 2019. The remainder of this section is effective when it becomes law.

PART IV. ALLOW EXPUNCTION OF MULTIPLE NONVIOLENT MISDEMEANOR OR FELONY CONVICTIONS

SECTION 4.(a) G.S. 15A-145.5 reads as rewritten:

"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

- (1) A Class A through G felony or a Class A1 misdemeanor.
- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

- 1 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
2 which punishment was determined pursuant to G.S. 14-3(c).
3 (7) An offense under G.S. 14-401.16.
4 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
5 (8) Any felony offense in which a commercial motor vehicle was used in the
6 commission of the offense.
7 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
8 (9) Any offense that is an attempt to commit an offense described in subdivisions
9 (1) through (8a) of this subsection.

10 (b) Notwithstanding any other provision of law, if the person is convicted of more than
11 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
12 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person
13 had already been served with criminal process for the commission of a nonviolent felony or
14 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
15 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction
16 under this section, and the expunction order issued under this section shall provide that the
17 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
18 expunged from the person's record in accordance with this section.

19 (c) A person may file a petition, in the court of the county where the person was
20 convicted, for expunction of ~~a one or more nonviolent misdemeanor or nonviolent felony~~
21 ~~conviction-convictions~~ from the person's criminal record if the person has ~~no other misdemeanor~~
22 ~~or felony convictions, other than a traffic violation, not previously been convicted of a Class A1~~
23 ~~misdemeanor offense or a felony offense that is not considered a nonviolent felony. The A~~
24 ~~petition for expunction of one or more nonviolent felony convictions shall not be filed earlier~~
25 ~~than 10 years after the date of the person's last conviction for a nonviolent felony or nonviolent~~
26 ~~misdemeanor, other than a traffic offense, or when any active sentence, period of probation, and~~
27 ~~post-release supervision has been served, whichever occurs later. A petition for expunction of~~
28 ~~one or more nonviolent misdemeanor convictions shall not be filed earlier than five years for a~~
29 ~~after the date of the person's last conviction for a nonviolent felony or nonviolent misdemeanor~~
30 ~~misdemeanor, other than a traffic offense, or when any active sentence, period of probation, and~~
31 ~~post-release supervision has been served, whichever occurs later. The petition shall contain, but~~
32 ~~not be limited to, the following:~~

- 33 (1) An affidavit by the petitioner that the petitioner ~~has been~~ is of good moral
34 character ~~since the date of conviction for the nonviolent misdemeanor or~~
35 ~~nonviolent felony~~ and has not been convicted of any other felony or
36 misdemeanor, other than a traffic violation, under the laws of the United States
37 or the laws of this State or any other ~~state~~ state during the applicable five-year
38 or 10-year waiting period set forth in this subsection.
39 (2) Verified affidavits of two persons who are not related to the petitioner or to
40 each other by blood or marriage, that they know the character and reputation
41 of the petitioner in the community in which the petitioner lives and that the
42 petitioner's character and reputation are good.
43 (3) A statement that the petition is a motion in the cause in the case wherein the
44 petitioner was convicted.
45 (4) An application on a form approved by the Administrative Office of the Courts
46 requesting and authorizing a name-based State and national criminal history
47 record check by the Department of Public Safety using any information
48 required by the Administrative Office of the Courts to identify the individual,
49 a search by the Department of Public Safety for any outstanding warrants on
50 pending criminal cases, and a search of the confidential record of expunctions
51 maintained by the Administrative Office of the Courts. The application shall

1 be filed with the clerk of superior court. The clerk of superior court shall
2 forward the application to the Department of Public Safety and to the
3 Administrative Office of the Courts, which shall conduct the searches and
4 report their findings to the court.

- 5 (5) An affidavit by the petitioner that no restitution orders or civil judgments
6 representing amounts ordered for restitution entered against the petitioner are
7 outstanding.

8 Upon filing of the petition, the petition shall be served upon the district attorney of the court
9 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
10 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
11 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
12 additional 30 days to file objection to the petition. The district attorney shall make his or her best
13 efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the
14 date of the hearing.

15 The presiding judge is authorized to call upon a probation officer for any additional
16 investigation or verification of the petitioner's conduct since the conviction. The court shall
17 review any other information the court deems relevant, including, but not limited to, affidavits
18 or other testimony provided by law enforcement officers, district attorneys, and victims of crimes
19 committed by the petitioner.

20 If the court, after hearing, finds that the petitioner has not previously been granted an
21 expunction under this ~~section~~, section during the applicable five-year or 10-year waiting period
22 set forth in this subsection, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the
23 petitioner ~~has remained~~ is of good moral character; the petitioner has no outstanding warrants or
24 pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than
25 a traffic ~~violation~~, violation during the applicable five-year or 10-year waiting period set forth in
26 this subsection; the petitioner has no outstanding restitution orders or civil judgments
27 representing amounts ordered for restitution entered against the petitioner; ~~and the petitioner was~~
28 convicted of an offense or offenses eligible for expunction under this section and was convicted
29 of, and completed any sentence received for, a nonviolent felony at least 10 years prior to the
30 filing of the petition or a nonviolent misdemeanor at least five years prior to the filing of the
31 petition, ~~section~~; and the petitioner has completed (i) the five-year waiting period set forth in this
32 subsection for expunction of one or more nonviolent misdemeanor convictions or (ii) the 10-year
33 waiting period set forth in this subsection for expunction of one or more nonviolent felony
34 convictions, it may order that ~~such the~~ person be restored, in the contemplation of the law, to the
35 status the person occupied before ~~such the~~ arrest or indictment or information, except as provided
36 in G.S. 15A-151.5. If the court denies the petition, the order shall include a finding as to the
37 reason for the denial.

38 For a petition for expunction of one or more nonviolent misdemeanor convictions, if the
39 court, after hearing, finds that the petitioner has not previously been granted an expunction under
40 this section during the applicable five-year or 10-year waiting period set forth in this subsection,
41 G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner is of good moral
42 character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has
43 no other felony or misdemeanor convictions other than a traffic violation during the applicable
44 five-year or 10-year waiting period set forth in this subsection; the petitioner has no outstanding
45 restitution orders or civil judgments representing amounts ordered for restitution entered against
46 the petitioner; the petitioner was convicted of an offense or offenses eligible for expunction under
47 this section; and the petition has not been filed earlier than seven years after the date of the
48 petitioner's last conviction for a nonviolent felony or nonviolent misdemeanor, other than a traffic
49 offense, or when any active sentence, period of probation, and post-release supervision has been
50 served, whichever occurs later, it shall order that the person be restored, in the contemplation of

the law, to the status the person occupied before the arrest or indictment or information, except as provided in G.S. 15A-151.5.

...

(e) The court shall also order that the conviction or convictions be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order, as provided in G.S. 15A-150.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction or convictions ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

...."

SECTION 4.(b) This section becomes effective December 1, 2019, and applies to petitions filed on or after that date.

PART V. EFFECTIVE DATE

SECTION 5 Except as otherwise provided, this act becomes effective December 1, 2019.