

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

H

5

HOUSE BILL 121
Committee Substitute Favorable 2/27/19
Committee Substitute #2 Favorable 3/25/19
Committee Substitute #3 Favorable 4/8/19
Fifth Edition Engrossed 4/15/19

Short Title: Expunction Related to RTA/No Conviction.

(Public)

Sponsors:

Referred to:

February 21, 2019

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CERTAIN OFFENSES COMMITTED ON OR BEFORE NOVEMBER 30, 2019, FOR OFFENDERS UNDER THE AGE OF EIGHTEEN AT THE TIME OF CONVICTION AND TO MODIFY THE LAW ON EXPUNCTION OF RECORDS WHEN CHARGES ARE DISMISSED OR THERE ARE FINDINGS OF NOT GUILTY.

The General Assembly of North Carolina enacts:

PART I. JUVENILE EXPUNCTIONS FOR CERTAIN OFFENSES COMMITTED ON OR BEFORE NOVEMBER 30, 2019 FOR OFFENDERS UNDER THE AGE OF 18 AT THE TIME OF CONVICTION

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



* H 1 2 1 - V - 5 *

1 county where the person was convicted. Once filed, the clerk shall forward the petition to the
2 district attorney, and the senior resident superior court judge or their designee. The court, without
3 objection from the district attorney following a 10-day period of notice, may either order the
4 expunction without a formal hearing or shall conduct a hearing. Upon order of expungement, the
5 clerk shall forward the petition to the Administrative Office of the Courts.

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

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

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

18 **SECTION 1.(b)** This section is effective December 1, 2019, and applies to offenses
19 committed on or before November 30, 2019.

20 **PART II. PROSECUTOR ACCESS TO EXPUNGED FILES**

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

22
23 "(a) Notwithstanding any other provision of this Article, the Administrative Office of the
24 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available
25 to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under
26 any of the following:

- 27 (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at
28 the time of conviction of misdemeanor; expunction of certain other
29 misdemeanors.
- 30 (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18
31 at the time of conviction of certain gang offenses.
- 32 (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of
33 age at the time of the offense of certain drug offenses.
- 34 (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of
35 age at the time of the offense of certain toxic vapors offenses.
- 36 (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18
37 years of age at the time of the commission of a nonviolent felony.
- 38 (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age
39 limitation.
- 40 (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- 41 (7a) G.S. 15A-145.8. Expunction of records for offenders under the age of 18 at
42 the time of conviction of certain misdemeanors and felonies upon completion
43 of the sentence.
- 44 (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- 45 (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed."

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

47 **PART III. STREAMLINE EXPUNCTIONS FOR CHARGES NOT RESULTING IN** 48 **CONVICTION**

49 **SECTION 3.(a)** G.S. 15A-146 reads as rewritten:
50

1 "§ 15A-146. Expunction of records when charges are dismissed or there are findings of not
2 guilty.

3 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
4 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
5 dismissed, that person may petition the court of the county where the charge was brought for an
6 order to expunge from all official records any entries relating to ~~his~~ that person's apprehension
7 or trial. ~~The court shall hold a hearing on the petition and, upon finding that the person had not~~
8 ~~previously been convicted of any felony under the laws of the United States, this State, or any~~
9 ~~other state, Upon finding that the charge was dismissed, and without objection from the district~~
10 ~~attorney following a 10-day period of notice, the court shall~~ may either order the expunction.
11 expunction without a formal hearing, or shall conduct a hearing. No person as to whom such an
12 order has been entered shall be held thereafter under any provision of any law to be guilty of
13 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for
14 any purpose, by reason of ~~his~~ that person's failure to recite or acknowledge any expunged entries
15 concerning apprehension or trial.

16 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
17 offenses and the charges are dismissed, then a person may petition to have each of the dismissed
18 charges expunged. ~~The court shall hold a hearing on the petition. If the court finds that the person~~
19 ~~had not previously been convicted of any felony under the laws of the United States, this State,~~
20 ~~or any other state, charges were dismissed, and without objection from the district attorney~~
21 ~~following a 10-day period of notice, the court shall~~ may either order the expunction
22 expunction without a formal hearing, or shall conduct a hearing.

23 (a2) If any person is charged with a crime, either a misdemeanor or a felony, or an
24 infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not
25 responsible is entered, that person may petition the court of the county where the charge was
26 brought for an order to expunge from all official records any entries relating to apprehension or
27 trial of that crime. ~~The court shall hold a hearing on the petition and upon finding that the person~~
28 ~~had not previously been convicted of any felony under the laws of the United States, this State,~~
29 ~~or any other state, Upon determining that a finding of not guilty or not responsible was entered,~~
30 ~~and without objection from the district attorney following a 10-day period of notice, the court~~
31 ~~shall~~ may either order the expunction. expunction without a formal hearing, or shall conduct a
32 hearing. No person as to whom such an order has been entered shall be held thereafter under any
33 provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement
34 or response to any inquiry made for any purpose, by reason of failure to recite or acknowledge
35 any expunged entries concerning that crime. If a person is charged with multiple offenses and
36 findings of not guilty or not responsible are made on charges, then a person may petition to have
37 each of the charges disposed by a finding of not guilty or not responsible expunged. ~~The court~~
38 ~~shall hold a hearing on the petition. If the court finds that the person had not previously been~~
39 ~~convicted of any felony under the laws of the United States, this State, or any other state, Upon~~
40 ~~determining that findings of not guilty or not responsible were entered, and without objection~~
41 ~~from the district attorney following a 10-day period of notice, the court shall~~ may either order the
42 expunction. expunction without a formal hearing, or shall conduct a hearing.

43 The trial court at the time of trial may grant an expunction pursuant to this section without
44 conducting a formal hearing for findings of not guilty or not responsible entered while under the
45 court's immediate jurisdiction.

46"

47 **SECTION 3.(b)** The Administrative Office of the Courts shall provide forms and
48 instructions for expunction petitions that establish a standardized uniform process for all clerks
49 of superior court to follow to have petitions signed by a judge and forwarded to the State Bureau
50 of Investigation.

1 **SECTION 3.(c)** This section becomes effective December 1, 2019, and applies to
2 petitions for expunctions filed on or after that date.

3

4 **PART IV. EFFECTIVE DATE**

5 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
6 law.