

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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SENATE BILL 562
Judiciary Committee Substitute Adopted 5/2/19
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Short Title: The Second Chance Act.

(Public)

Sponsors:

Referred to:

April 3, 2019

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

4 The General Assembly of North Carolina enacts:

5
6 **PART I. EXPUNCTIONS FOR OFFENSES COMMITTED PRIOR TO THE**
7 **EFFECTIVE DATE OF THE LEGISLATION KNOWN AS RAISE THE AGE**

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

10 "**§ 15A-145.8 Expunction of records for offenders under the age of 18 at the time of**
11 **conviction of certain misdemeanors and felonies upon completion of the**
12 **sentence.**

13 (a) A person or the district attorney may file a petition, in the court of the county where
14 the person was convicted for expunction of any misdemeanor or Class H or I felony except as
15 provided in subsection (b) of this section, from the person's criminal record if the offense was
16 committed while the person was less than 18 years of age but at least 16 years of age. The petition
17 shall not be filed until (i) any active sentence, period of probation, and post-release supervision
18 has been served and (ii) the person has no restitution orders or civil judgments representing
19 amounts ordered for restitution outstanding.

20 (b) Any violation of the motor vehicle laws under Chapter 20 of the General Statutes,
21 including any offense involving impaired driving as defined in G.S. 20-4.01(24a) or any offense
22 requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or
23 not the person is currently required to register, is not eligible for expunction under this section.

24 (c) If the petition was not filed by the district attorney, the petition shall be served upon
25 the district attorney of the court wherein the case was tried resulting in conviction. The district
26 attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly
27 notified as to the date of the hearing of the petition. The district attorney shall make his or her
28 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
29 to the date of the hearing.

30 (d) If the court, after hearing, finds that (i) the offense was committed while the person
31 was less than 18 years of age but at least 16 years of age, (ii) any active sentence, period of
32 probation, and post-release supervision was completed, and (iii) the person has no restitution
33 orders or civil judgments representing amounts ordered for restitution outstanding, the court shall
34 order that the person be restored, in the contemplation of the law, to the status the person occupied
35 before such arrest or indictment or information, and that the record be expunged from the records



1 of the court. A person convicted of multiple offenses shall be eligible to have those convictions
2 expunged pursuant to this section.

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

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

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

17 (h) A person who files a petition for expunction of a criminal record under this section
18 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
19 time the petition is filed. Fees collected under this subsection are payable to the Administrative
20 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and
21 fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs
22 of criminal record checks performed in connection with processing petitions for expunctions
23 under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be
24 retained by the Administrative Office of the Courts and used to pay the costs of processing
25 petitions for expunctions under this section. This subsection does not apply to petitions filed by
26 an indigent."

27 **SECTION 1.(b)** This section becomes effective December 1, 2019, and applies to
28 offenses committed before that date.

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

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

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

- 36 (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at
37 the time of conviction of misdemeanor; expunction of certain other
38 misdemeanors.
- 39 (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18
40 at the time of conviction of certain gang offenses.
- 41 (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of
42 age at the time of the offense of certain drug offenses.
- 43 (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of
44 age at the time of the offense of certain toxic vapors offenses.
- 45 (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18
46 years of age at the time of the commission of a nonviolent felony.
- 47 (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age
48 limitation.
- 49 (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- 50 (7a) G.S. 15A-145.7. Expunction of records for first offenders under 20 years of
51 age at the time of the offense of certain offenses.

1 (7b) G.S. 15A-145.8. Expunction of records for offenders under the age of 18 at
2 the time of conviction of certain misdemeanors and felonies upon completion
3 of the sentence.

4 (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.

5 (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed."

6 **SECTION 2.(b)** This section becomes effective December 1, 2019.

7
8 **PART III. STREAMLINE EXPUNCTIONS FOR CHARGES NOT RESULTING IN**
9 **CONVICTION**

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

11 "**§ 15A-146. Expunction of records when charges are dismissed or there are findings of not**
12 **guilty.**

13 (a) Dismissal. – If any person is charged with a crime, either a misdemeanor or a felony,
14 or was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the
15 charge is dismissed, that person or the district attorney may petition the court of the county where
16 the charge was brought for an order to expunge from all official records any entries relating to
17 ~~his that person's~~ apprehension or trial. ~~The court shall hold a hearing on the petition and, upon~~
18 ~~finding that the person had not previously been convicted of any felony under the laws of the~~
19 ~~United States, this State, or any other state, Upon a finding that the sole charge was dismissed,~~
20 the court shall order the expunction. ~~No person as to whom such an order has been entered shall~~
21 ~~be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of~~
22 ~~otherwise giving a false statement or response to any inquiry made for any purpose, by reason of~~
23 ~~his failure to recite or acknowledge any expunged entries concerning apprehension or trial.~~

24 (a1) Multiple Dismissals. – ~~Notwithstanding subsection (a) of this section, if~~ If a person is
25 charged with multiple offenses and ~~the any~~ charges are dismissed, then a person may petition to
26 have each of the dismissed charges expunged. ~~The court shall hold a hearing on the petition.~~ If
27 the court finds that all of the person had not previously been convicted of any felony under the
28 ~~laws of the United States, this State, or any other state, charges were dismissed,~~ the court shall
29 order the expunction. If the court finds that any charge resulted in a conviction on the day of the
30 dismissal or had not yet reached final disposition, the court shall hold a hearing to determine if
31 the records of any charges dismissed retain evidentiary value. If the court, after hearing, finds
32 that all related criminal charges have reached final disposition, the court may order the
33 expunction of any charge that was dismissed.

34 (a2) Finding of Not Guilty. – If any person is charged with a crime, either a misdemeanor
35 or a felony, or an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of
36 not guilty or not responsible is entered, that person or the district attorney may petition the court
37 of the county where the charge was brought for an order to expunge from all official records any
38 entries relating to apprehension or trial of that crime. ~~The court shall hold a hearing on the petition~~
39 ~~and upon finding that the person had not previously been convicted of any felony under the laws~~
40 ~~of the United States, this State, or any other state, Upon determining that a finding of not guilty~~
41 or not responsible was entered and all related criminal charges have reached final disposition, the
42 court shall order the expunction. ~~No person as to whom such an order has been entered shall be~~
43 ~~held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise~~
44 ~~giving a false statement or response to any inquiry made for any purpose, by reason of failure to~~
45 ~~recite or acknowledge any expunged entries concerning that crime.~~ If a person is charged with
46 multiple offenses and findings of not guilty or not responsible are made on charges, then a person
47 or the district attorney may petition to have each of the charges disposed by a finding of not guilty
48 or not responsible expunged. ~~The court shall hold a hearing on the petition. If the court finds that~~
49 ~~the person had not previously been convicted of any felony under the laws of the United States,~~
50 ~~this State, or any other state, Upon determining that findings of not guilty or not responsible were~~
51 entered, the court shall order the expunction.

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

6 (a4) Dismissal on or After July 1, 2020. – If any person is charged with a misdemeanor or
7 felony, excluding any violation of the motor vehicle laws under Chapter 20 of the General
8 Statutes, and the charge is dismissed on or after July 1, 2020, the dismissed charge is expunged
9 by operation of law. The district attorney who filed the dismissal or judicial officer who ordered
10 the dismissal shall provide notice of the dismissal to the clerk.

11 (a5) Finding of Not Guilty on or After July 1, 2020. – If any person is charged with a
12 misdemeanor or felony, excluding any violation of the motor vehicle laws under Chapter 20 of
13 the General Statutes, and a finding of not guilty is entered on or after July 1, 2020, the court that
14 entered the finding shall order the expunction from all official records any entries relating to
15 apprehension or trial of that crime. If a person is charged with multiple offenses and any charge
16 was not dismissed, the court shall hold a hearing to determine if the records of any charges
17 dismissed retain evidentiary value. If the court, after hearing, finds that all related criminal
18 charges have reached final disposition, the court may order the expunction of any charge that
19 was dismissed.

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

22 ...

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

28 "

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

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

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

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

1 **SECTION 3.(d)** Subsections (a) through (a3), and (a6) of G.S. 15A-146 as amended
2 by subsection (a) of this section, become effective December 1, 2019, and apply to petitions filed
3 on or after that date. Subsections (a4) and (a5) of G.S. 15A-146 become effective July 1, 2020,
4 and apply to charges disposed of on or after that date. The remainder of this section is effective
5 when it becomes law.

6
7 **PART IV. ALLOW EXPUNCTION OF MULTIPLE NONVIOLENT MISDEMEANOR**
8 **OR FELONY CONVICTIONS**

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

10 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

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

- 13 (1) A Class A through G felony or a Class A1 misdemeanor.
- 14 (2) An offense that includes assault as an essential element of the offense.
- 15 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the
16 General Statutes, whether or not the person is currently required to register.
- 17 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),
18 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,
19 14-277.3, 14-277.3A, 14-321.1.
- 20 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
21 involves methamphetamines, heroin, or possession with intent to sell or
22 deliver or sell and deliver cocaine.
- 23 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
24 which punishment was determined pursuant to G.S. 14-3(c).
- 25 (7) An offense under G.S. 14-401.16.
- 26 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
- 27 (8) Any felony offense in which a commercial motor vehicle was used in the
28 commission of the offense.
- 29 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
- 30 (9) Any offense that is an attempt to commit an offense described in subdivisions
31 (1) through (8a) of this subsection.

32 (b) Notwithstanding any other provision of law, if the person is convicted of more than
33 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
34 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person
35 had already been served with criminal process for the commission of a nonviolent felony or
36 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
37 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction
38 under this section, and the expunction order issued under this section shall provide that the
39 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
40 expunged from the person's record in accordance with this section.

41 (c) A person may file a petition, in the court of the county where the person was
42 convicted, for expunction of ~~a one or more nonviolent misdemeanor or nonviolent felony~~
43 ~~conviction-convictions~~ from the person's criminal record if the person has ~~no other misdemeanor~~
44 ~~or felony convictions, other than a traffic violation. The not previously been convicted of an A1~~
45 misdeemeanor or a felony that is listed as an exception to the term "nonviolent felony" as provided
46 in G.S. 15A-145.5(a). A petition for expunction of one or more nonviolent felony convictions
47 shall not be filed earlier than 10 years after the date of the person's last conviction for a nonviolent
48 felony or nonviolent misdemeanor, other than a traffic offense, or when any active sentence,
49 period of probation, and post-release supervision has been served, whichever occurs later. A
50 petition for expunction of one or more nonviolent misdemeanor convictions shall not be filed
51 earlier than five years for a after the date of the person's last conviction for a nonviolent felony

1 or nonviolent misdemeanor ~~misdemeanor~~, other than a traffic offense, or when any active
2 sentence, period of probation, and post-release supervision has been served, whichever occurs
3 later. The petition shall contain, but not be limited to, the following:

- 4 (1) An affidavit by the petitioner that the petitioner ~~has been~~ is of good moral
5 character ~~since the date of conviction for the nonviolent misdemeanor or~~
6 ~~nonviolent felony~~ and has not been convicted of any other felony or
7 misdemeanor, other than a traffic violation, under the laws of the United States
8 or the laws of this State or any other ~~state~~ state during the applicable five-year
9 or 10-year waiting period set forth in this subsection.
- 10 (2) Verified affidavits of two persons who are not related to the petitioner or to
11 each other by blood or marriage, that they know the character and reputation
12 of the petitioner in the community in which the petitioner lives and that the
13 petitioner's character and reputation are good.
- 14 (3) A statement that the petition is a motion in the cause in the case wherein the
15 petitioner was convicted.
- 16 (4) An application on a form approved by the Administrative Office of the Courts
17 requesting and authorizing a name-based State and national criminal history
18 record check by the Department of Public Safety using any information
19 required by the Administrative Office of the Courts to identify the individual,
20 a search by the Department of Public Safety for any outstanding warrants on
21 pending criminal cases, and a search of the confidential record of expunctions
22 maintained by the Administrative Office of the Courts. The application shall
23 be filed with the clerk of superior court. The clerk of superior court shall
24 forward the application to the Department of Public Safety and to the
25 Administrative Office of the Courts, which shall conduct the searches and
26 report their findings to the court.
- 27 (5) An affidavit by the petitioner that no restitution orders or civil judgments
28 representing amounts ordered for restitution entered against the petitioner are
29 outstanding.

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

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

42 If the court, after hearing, finds that the petitioner has not previously been granted an
43 expunction of a nonviolent felony under this section, G.S. 15A-145, 15A-145.1, 15A-145.2,
44 15A-145.3, or 15A-145.4; section; the petitioner ~~has remained~~ is of good moral character; the
45 petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other
46 felony or misdemeanor convictions other than a traffic ~~violation;~~ violation during the applicable
47 five-year or 10-year waiting period set forth in this subsection; the petitioner has no outstanding
48 restitution orders or civil judgments representing amounts ordered for restitution entered against
49 the petitioner; ~~and the petitioner was convicted of an offense~~ or offenses eligible for expunction
50 under this ~~section and was convicted of, and completed any sentence received for, a nonviolent~~
51 ~~felony at least 10 years prior to the filing of the petition or a nonviolent misdemeanor at least five~~

1 ~~years prior to the filing of the petition, it section; and the petitioner has completed the five-year~~
2 ~~waiting period set forth in this subsection for expunction of one or more nonviolent misdemeanor~~
3 ~~convictions, or the 10-year waiting period set forth in this subsection for expunction of one or~~
4 ~~more nonviolent felony convictions, the court may order that ~~such the~~ person be restored, in the~~
5 ~~contemplation of the law, to the status the person occupied before ~~such the~~ arrest or indictment~~
6 ~~or information, except as provided in G.S. 15A-151.5. If the court denies the petition, the order~~
7 ~~shall include a finding as to the reason for the denial.~~

8 If the court, after hearing, finds that the petitioner has not previously been granted an
9 expunction for one or more nonviolent misdemeanors under this section; the petitioner is of good
10 moral character; the petitioner has no outstanding warrants or pending criminal cases; the
11 petitioner has no outstanding restitution orders or civil judgments representing amounts ordered
12 for restitution entered against the petitioner; the petitioner was convicted of an offense or offenses
13 eligible for expunction under this section; and the petition has not been filed earlier than seven
14 years after the date of the petitioner's last conviction for any offense other than a traffic offense,
15 or when any active sentence, period of probation, and post-release supervision has been served,
16 whichever occurs later, the court may order that the person be restored, in the contemplation of
17 the law, to the status the person occupied before the arrest or indictment or information, except
18 as provided in G.S. 15A-151.5. If the court denies the petition, the order shall include a finding
19 as to the reason for the denial.

20 ...

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

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

35"

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

38 **PART V. EFFECTIVE DATE**

39 **SECTION 5.** Except as otherwise provided, this act becomes effective December 1,
40 2019.
41