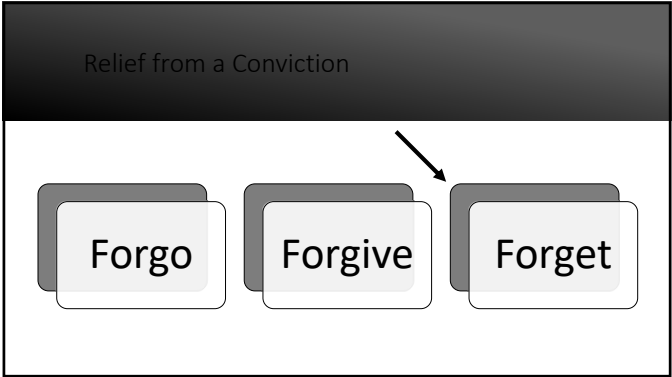
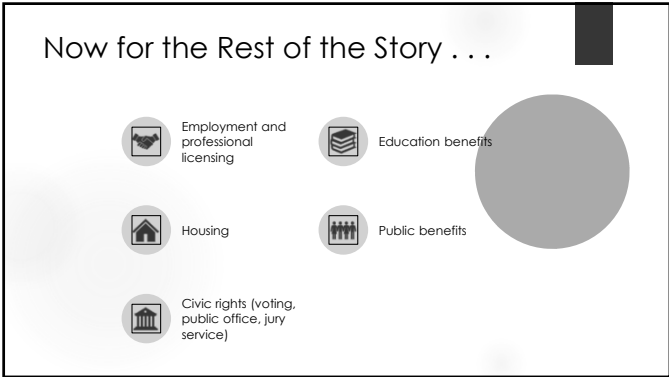


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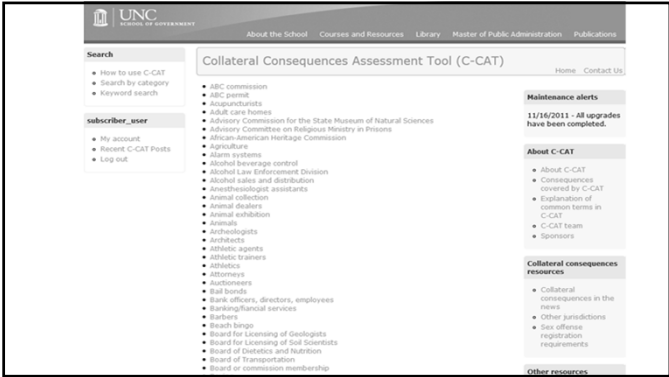
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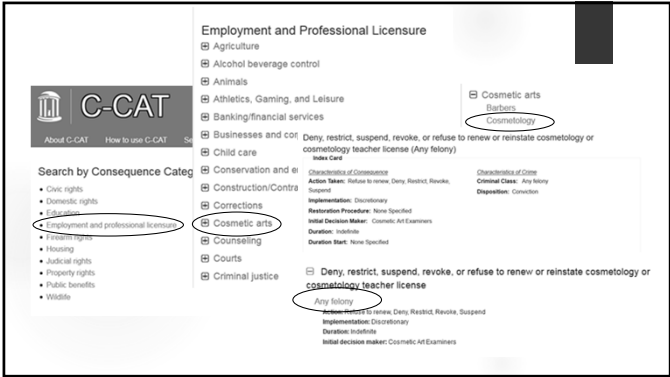
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4



5



6

Big Change
No. 1

“Raise the Age Parity Relief”
15A-145.8A

7

Expunction is mandatory . . .

for convictions of misdemeanors or Class H or I felonies

if offense was committed

and sentence has been completed

except Ch. 20 offenses and registrable offenses

when person was 16 or 17 years old, and before Dec. 1, 2019

including satisfaction of any restitution order

8

How should you rule?

- Petitioner was convicted as an adult of felony breaking and entering, a Class H felony, when he was 17 years old and before Dec. 1, 2019. He has completed his sentence and restitution requirements.
- The prosecutor objects because the petitioner was originally charged with first-degree burglary, a Class D felony.
- How should you rule?

9

Poll # 1

- How should you rule?

1. You must grant the petition

2. You must deny the petition

3. You may grant or deny the petition

10

Procedural Issues

DA or individual may file petition

DA must make best efforts to contact victim of offense

On request, victim has right to be present at any hearing and victim's views shall be considered by the court

11

EXPUNCTION STATUTES ARE CUMULATIVE

12

Big Change
No. 2

Dismissals & Acquittals
15A-146

13

Expunction is mandatory . . .

if all charges are dismissed
or result in acquittal

- whether the person has other expunctions or convictions of any kind


if some charges result in acquittal

- once all charges are resolved
- whether the person has other expunctions or convictions of any kind

14

Expunction is discretionary . . .

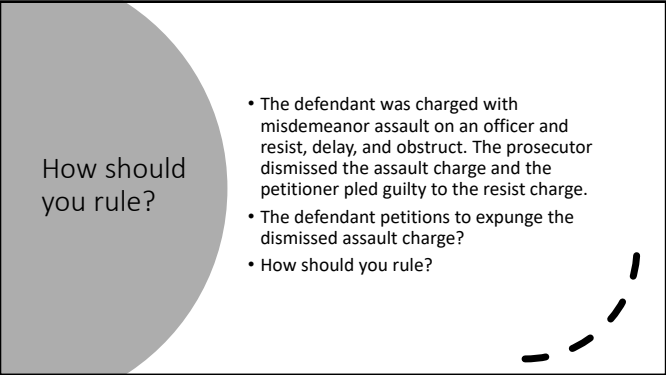
- When some charges result in dismissal
 - if other charges remain pending or result in conviction
 - whether or not the person has other expunctions or convictions of any kind



15

How should you rule?

- The defendant was charged with misdemeanor assault on an officer and resist, delay, and obstruct. The prosecutor dismissed the assault charge and the petitioner pled guilty to the resist charge.
- The defendant petitions to expunge the dismissed assault charge?
- How should you rule?



16

Poll # 2

• How should you rule?

1. You must grant the petition

2. You must deny the petition

3. You may grant or deny the petition

17

How should you rule?

• The defendant was charged with felony assault on an officer. Pursuant to a plea deal, the defendant pled guilty to misdemeanor assault on an officer, a lesser offense.

• The defendant petitions to expunge the felony assault charge.

• How should you rule?

18

Procedural Issues

The court “may grant a petition . . . without a hearing.” 15A-146(a6)

Language does not apply to denial of petition

An arresting agency “may maintain investigative records related to a charge that has been expunged.” 15A-146(a5)

Effective for petitions filed on or after Dec. 1, 2020

19

How should you rule?

• Based on a petition filed in Nov. 2020, a judge granted a petition to expunge a voluntary dismissal by a DA of a DWI.

• The DA has refiled the charge.

• The defense moves to dismiss the charge or, in the alternative, suppress the records.

• How should you rule?

20

Poll # 3

• How should you rule?

1. Dismiss the charges

2. Suppress the records

3. Deny both motions

21

Big Change
No. 3

Older Nonviolent Felonies &
Misdemeanors
15A-145.5

22

Expunction is . . .

Mandatory

• for one misdemeanor or more than one misdemeanor

• if the petitioner meets the statutory criteria

Discretionary

• for felony

• if the petitioner meets the statutory criteria

23

Eligibility
Criteria

• Is it an eligible offense?

• Does the person have disqualifying convictions?

• Does the person have disqualifying expunctions?

• Does the person satisfy the waiting period?

24

§ 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.

(6)

An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).

(7)

An offense under G.S. 14-401.16.

(7a)

An offense under G.S. 14-54(a), 14-54(a1), or 14-56.

(8)

Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(8a)

~~An offense involving impaired driving as defined in G.S. 20-4.01(24a).~~

(9)

Any offense that is an attempt to commit an offense described in subdivisions (1) through (8a) of this subsection.

25

How should you rule?

- The defendant petitions to expunge a misdemeanor conviction for resist, delay, and obstruct, his only conviction.
- The DA opposes the petition on the ground that the evidence showed an assault. The DA agrees that the defendant meets all the other eligibility criteria.
- How should you rule?

26

Poll # 4

- How should you rule?

1. You must grant the petition

2. You must deny petition

3. You may grant or deny the petition

27

Big Change

No. 4

- Expunged convictions may be used in the prosecution of a new offense, eff. for expunctions granted on or after 7/1/2018
 - For prior record level at felony sentencing
- Under Second Chance Act, eff. 12/1/2020,
 - For prior conviction level at misdemeanor sentencing
 - As basis for habitual offense
 - When prior conviction raises offense level
 - Under Rule of Evidence 404(b) and 609
 - For eligibility under 90-96(a)

28



RELIEF
from a Criminal Conviction

2020 Edition

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