



**Second Chance Act**  
2021 Elected Clerks Winter Conference  
March 11, 2021

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**Second Chance Act, S.L. 2020-35 (SB 562)**

- 3 Categories of Relief:
  - New "Raise the Age" expunction
  - Nonviolent convictions
  - Dismissed / NG charges
- Expands law enforcement & DA access to expunctions
- Requires "automated" expunctions (starting Dec. 2021)

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**Raise the Age Expunction (G.S. 15A-145.8A)**



- New G.S. 15A-145.8A expunction applies to convictions of juvenile offenders prior to Raise the Age.
- Allows adults with prior juvenile convictions to benefit from the policy change.



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### Raise the Age Expunction (G.S. 15A-145.8A)

**Eligibility Criteria:**

- Applies to a Class H or I felony, and any misdemeanor, except for:
  - Ch. 20 motor vehicle violations, including impaired driving offenses; and
  - Offenses requiring sex offender registration, whether or not the person is currently required to register.
- A person is eligible if:
  - offense occurred before 12/1/2019;
  - person was 16 or 17 at time of offense;
  - person has completed sentence; and
  - person has no restitution orders or outstanding civil judgments for restitution
- The expunction is mandatory, if these criteria are satisfied.



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### Raise the Age Expunction (G.S. 15A-145.8A)

**Filing / Hearing Process:**

- Petition may be filed by the person or the DA's Office
- Multiple offenses may be expunged
- Petition must be filed in county of conviction on an NCAOC form
- No criminal background or prior expunction checks
- \$175 filing fee applies, unless person is indigent or DA initiates filing
- Requires service on DA's Office 30 days prior to any hearing (if petition not filed by DA)
- Victim has right to attend hearing and be heard, upon request
- If petition granted, clerk must route certified copies, per G.S. 15A-150



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### Raise the Age Expunction (G.S. 15A-145.8A)

**New Forms:**

- AOC-CR-293 (*Petition and Order of Expunction Under G.S. 15A-145.8A*)
- AOC-CR-293 Instructions
- AOC-CR-294 (*District Attorney Petition and Order of Expunction Under G.S. 15A-145.8A*)



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### Mass Expunction Relief

- Many DA's Offices are considering mass prosecutor-initiated expunctions under G.S. 15A-145.8A.
- 56 counties have requested Second Chance Act eligibility lists.
- So far, only Mecklenburg County has expunged eligible convictions.
- Prosecutorial District 8 (Nash, Edgecombe, Wilson) and District 16 (Durham) are preparing for court hearings in March.



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### Nonviolent Convictions (G.S. 15A-145.5)

- Expanded expunction relief under G.S. 15A-145.5 for "nonviolent" misdemeanors and felonies, effective for petitions filed on or after December 1, 2020.
- 3 categories of expunctions:
  - **One nonviolent misdemeanor** may be expunged after **5 years**;
  - **Multiple nonviolent misdemeanors** may be expunged after **7 years**; and
  - **One nonviolent felony** may be expunged after **10 years**.
- Eligibility criteria varies for each type of expunction.
- If court finds eligibility criteria are satisfied:
  - the court "*shall*" order expunction of one or more nonviolent misdemeanors.
  - the court "*may*" order expunction of one nonviolent felony.



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### Nonviolent Convictions (G.S. 15A-145.5)

#### Filing / Hearing Process:

- Petition must be filed in county of conviction on an NCAOC form
- Petitioner must submit various affidavits with petition
- \$175 filing fee applies, unless person is indigent
- Clerk must send petition to SBI and AOC for background checks
- Requires service on DA's Office 30 days prior to any hearing
- Victim has right to attend hearing and be heard, upon request
- If petition granted, clerk must route certified copies, per G.S. 15A-150



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### Nonviolent Convictions (G.S. 15A-145.5)

**Amended Forms:**

- AOC-CR-281 (Petition and Order of Expunction under G.S. 15A-145.5)
- AOC-CR-281 Instructions



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### Dismissed / NG Charges (G.S. 15A-146)

- Expanded petition-based expunction relief under G.S. 15A-146(a), (a1), and (a2) for charges resulting in dismissal, NG, or NR finding, effective for petitions filed on or after December 1, 2020.
- **Key Changes:**
  - Petition may be filed by the person or the DA's Office
  - No background checks are required
    - *A felony conviction is no longer disqualifying*
  - Expunctions may be granted without a hearing
- No filing fee, unless dismissal resulted from deferred prosecution or conditional discharge
  - *\*SB 562 did not add this provision, but it is a frequently asked question\**



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### Dismissed / NG Charges (G.S. 15A-146)

- **Dismissed Charges under G.S. 15A-146(a) and (a1):**
  - If all charges (or sole charge) in case were dismissed, the expunction is mandatory.
  - In a case with multiple charges, if any charge resulted in conviction on the day of the dismissal or had not yet reached final disposition, the expunction of a dismissed charge is discretionary.
- **NG/NR Charges under G.S. 15A-146(a2):**
  - If all related charges have reached final disposition, the expunction of any charge resulting in a NG or NR finding is mandatory.



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### Dismissed / NG Charges (G.S. 15A-146)

**Amended Forms:**

- AOC-CR-287 (*Petition and Order of Expunction Under G.S. 15A-146(a) or G.S. 15A-146(a1)*)
- AOC-CR-287 Instructions
- AOC-CR-288 (*Petition and Order of Expunction Under G.S. 15A-146(a2)*)
- AOC-CR-288 Instructions

**New Forms:**

- AOC-CR-295 (*District Attorney Petition and Order of Expunction Under G.S. 15A-146(a) or G.S. 15A-146(a1)*)
- AOC-CR-296 (*District Attorney Petition and Order of Expunction Under G.S. 15A-146(a2)*)



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### Automated Expunctions

- New G.S. 15A-146(a)(4), requires expunction “by operation of law” of any dismissed, NG, or NR charges if all of the following apply:
  - All charges are disposed on or after 12/1/21; and
  - All charges are dismissed without leave, dismissed by the court, or result in a NG or NR finding.
- However, no case with a felony charge dismissed pursuant to a plea agreement will be expunged.
- ***Applies to charges disposed of on or after 12/1/2021.***



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### Law Enforcement and DA Access to Expunctions

- Law enforcement agency access to expunction information under G.S. 15A-151(a) now includes the following expunctions:
  - G.S. 15A-145.8A (pre-Raise the Age juvenile convictions)
  - G.S. 15A-146 (Dismissals and NG charges)
- Form AOC-CR-280 (*Law Enforcement Application for Verification of Expunction*) was amended, effective December 1, 2020, to reflect these changes.
- District Attorney access to expunction information under G.S. 15A-151.5(a) now includes the following expunctions:
  - G.S. 15A-145.7 (first-time offenders under age 20 for certain offenses)
  - G.S. 15A-145.8A (pre-Raise the Age juvenile convictions)



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