

Summary of Expunction Law Changes Enacted by the Second Chance Act, S.L. 2020-35 (SB 562)

Expunction Changes Effective December 1, 2019 *(for offenses committed before that date)*

Expunction Statute and Form(s)	Prior Law	Offenses Committed Prior to December 1, 2019
<p>G.S. 15A-145.8A (pre-Raise the Age juvenile convictions)</p> <p>AOC-CR-293 AOC-CR-293i AOC-CR-294</p>	<ul style="list-style-type: none"> ▪ N/A 	<ul style="list-style-type: none"> ▪ Can expunge a Class H or I felony or any misdemeanor, except: <ul style="list-style-type: none"> ○ Ch. 20 violations, including impaired driving offenses, and ○ Offenses requiring registration as sex offender, whether or not person must currently register. ▪ Person is eligible if: <ul style="list-style-type: none"> ○ Offense committed before 12/1/19, ○ Person was 16 or 17 at time, ○ Person has completed sentence, and ○ Person has no restitution orders or outstanding civil judgments for restitution. ▪ A person or a prosecutor may file the petition ▪ \$175 filing fee applies, unless person is indigent or prosecutor filed petition ▪ 30-day prior notice to prosecutor ▪ Victim has right to attend hearing and be heard by the court ▪ If criteria are satisfied, court <i>shall</i> grant expunction

Expunction Changes Effective December 1, 2020 *(for petitions filed on or after that date)*

Expunction Statute and Form(s)	Prior Law	Petitions Filed/Orders Entered on or After December 1, 2020
<p>G.S. 15A-145.5 (expunction of nonviolent misdemeanor and felony convictions)</p> <p>AOC-CR-281 AOC-CR-281i</p>	<ul style="list-style-type: none"> ▪ Can expunge one nonviolent misdemeanor after 5 years; or one nonviolent felony after 10 years ▪ Multiple convictions are treated as one conviction only if obtained in same session of court and no offense occurred after the person was charged with any offense listed in petition ▪ Must have no other misdemeanor or felony convictions, other than traffic violation ▪ Must have no prior expunctions under G.S. 15A-145, 15A-145.1, 15A-145.2, 	<ul style="list-style-type: none"> ▪ Can expunge one nonviolent misdemeanor after 5 years; multiple nonviolent misdemeanors after 7 years; or one nonviolent felony after 10 years ▪ Multiple convictions are treated as one conviction if obtained in same session of court ▪ Must have no convictions, other than a traffic violation, during the 5-year, 7-year, or 10-year waiting period ▪ For one nonviolent misdemeanor, person must have no other convictions, other than traffic violation ▪ For multiple nonviolent misdemeanors, person must have no convictions for an offense listed as an exception to “nonviolent misdemeanor” or

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	<p>15A-145.3, 15A-145.4, or 15A-145.5</p> <ul style="list-style-type: none"> ▪ If criteria are satisfied, court <i>may</i> grant the expunction 	<p>“nonviolent felony” in G.S. 15A-145.5(a)</p> <ul style="list-style-type: none"> ▪ For a nonviolent felony, person must have no convictions for a misdemeanor listed as an exception to “nonviolent misdemeanor” in G.S. 15A-145.5(a), or any other felony ▪ Must have no prior expunctions under G.S. 15A-145.5 ▪ Victim has right to attend hearing and be heard by the court ▪ If criteria are satisfied, court <i>shall</i> grant expunction of one or more nonviolent misdemeanors; but <i>may</i> grant expunction of a nonviolent felony
<p>G.S. 15A-146 (dismissed and NG charges)</p> <p>AOC-CR-287 AOC-CR-287i AOC-CR-288 AOC-CR-288i New AOC-CR-295 New AOC-CR-296</p>	<ul style="list-style-type: none"> ▪ A person can petition to expunge one or more dismissed or NG charges ▪ Person must have no felony convictions ▪ Court must hold a hearing on the petition ▪ If criteria are satisfied, court <i>shall</i> grant the expunction 	<ul style="list-style-type: none"> ▪ A person or a prosecutor can petition to expunge one or more dismissed or NG charges ▪ A prior felony is not disqualifying ▪ No hearing is required ▪ If all charges were dismissed, court <i>shall</i> grant the expunction ▪ If any charge was dismissed in the same case where a charge resulted in a conviction or remains pending, court <i>may</i> grant the expunction ▪ If any charges resulted in findings of NG or NR and all related charges have reached final disposition, court <i>shall</i> grant the expunction of NG/NR charges ▪ Arresting agencies may retain “investigative records” related to expunged charges
<p>G.S. 15A-151(a) (law enforcement access to expunged files)</p> <p>AOC-CR-280</p>	<ul style="list-style-type: none"> ▪ Law enforcement agencies and certifying commissions may access expunctions under G.S. 15A-145.4, 15A-145.5, and 15A-145.6 for employment or certification purposes 	<ul style="list-style-type: none"> ▪ Law enforcement agencies and certifying commissions may access expunctions under G.S. 15A-145.4, 15A-145.5, 15A-145.6, 15A-145.8A, and 15A-146 for employment or certification purposes
<p>G.S. 15A-151.5 (prosecutor access to expunged files)</p>	<ul style="list-style-type: none"> ▪ Prosecutors may access electronic files of certain expunctions for records expunged on or after July 1, 2018 ▪ Expunged criminal records may be used to calculate prior record level for a subsequent offense 	<ul style="list-style-type: none"> ▪ G.S. 15A-145.7 and 15A-145.8A are now included in the list of expunctions prosecutors may access, if the criminal record was expunged on or after July 1, 2018 ▪ The record of an expunged conviction may be considered a “prior conviction” and used to calculate prior record and prior conviction level for a subsequent offense and multiple other purposes enumerated in the statute

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		<ul style="list-style-type: none"> ▪ An expunction cannot serve as a basis to challenge a conviction or sentence entered before the expunction
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Expunction Changes Effective December 1, 2021 *(for charges disposed on or after that date)*

Expunction Statute and Form(s)	Prior Law	Charges Disposed of on or after December 1, 2021
<p>G.S. 15A-146(a)(4) (dismissed and NG charges by “operation of law”)</p>	<ul style="list-style-type: none"> ▪ N/A 	<ul style="list-style-type: none"> ▪ Dismissed and NG/NR charges are expunged by operation of law if: <ul style="list-style-type: none"> ○ All charges are disposed on or after 12/1/2021, and ○ All charges are dismissed without leave, dismissed by the court, or result in NG or NR finding. ▪ However, no felony charge dismissed pursuant to a plea agreement will be expunged.