

Relief from a Criminal Conviction: A Guide to Expunctions, Certificates of Relief, and Other Procedures

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This forthcoming guide will address the various forms of relief from a criminal conviction available under North Carolina law, including expunctions, certificates of relief, restoration-of-rights procedures (such as for firearms), pardons, and other procedures. The excerpt below focuses on expunctions and certificates of relief. It describes recent legislation on expunctions and certificates of relief and sets out, in table form, the required statutory criteria.

In the past few years, the General Assembly has passed several acts on expunctions. The principal ones are discussed briefly below. To the extent these acts affect a person's eligibility for an expunction, they are discussed later in this guide in connection with the type of expunction affected.

In 2009, the General Assembly enacted [S.L. 2009-577](#) (H 1329), referred to in this guide as the 2009 Consolidation Act. The aim of the 2009 Consolidation Act was primarily organizational. It moved the substance of the expunction provisions from the statutes governing the particular offenses at issue—for example, the statutes on drug offenses in Chapter 90 of the General Statutes—to new statutes in Chapter 15A of the General Statutes—the chapter on criminal procedure. The legislation did not rewrite the substance of the expunction provisions. The new statutes retain most of the previous language, with each type of expunction in its own statute with its own requirements and procedures. A close comparison of the old and new provisions reveals some substantive changes, however, which are discussed throughout the guide in connection with the different types of expunctions affected. The 2009 Consolidation Act took effect with expunction petitions filed on or after December 1, 2009, meaning that it applies whether the offense or conviction occurred before or after that date. *See generally State v. Frazier*, ___ N.C. App. ___, 697 S.E.2d 467 (2010) (holding that judge did not have authority to enter expunction order under then-existing version of G.S. 14-50.30 because the statute authorized expunctions for offenses committed on or after a specific date and the offense in question occurred before that date; court noted that General Assembly amended the pertinent provisions in the 2009 Consolidation Act to make them applicable to petitions filed on or after Dec. 1, 2009).

In 2010, the General Assembly enacted [S.L. 2010-174](#) (H 726), which made several technical changes to the expunction statutes. This guide refers to that legislation as the 2010 Technical Changes Act. Among other things, it reconciled conflicts and fixed technical errors in the 2009 Consolidation Act. It also made technical changes to a second act on expunctions enacted in 2009, [S.L. 2009-510](#) (S 262), which did not take effect until October 1, 2010. This second 2009 act primarily addressed the giving of

notice of expunction orders to entities that have records to be expunged. For a further discussion of the 2010 act, including the changes it made to clarify the 2009 acts, see [2010 Legislation Affecting Criminal Law and Procedure](#) at pp. 8–9, no. 28 (Aug. 2010).

In 2011, the General Assembly passed two acts affecting expunctions. In [S.L. 2011-278](#) (S 397), the General Assembly created a new expunction opportunity for a first offender who committed a nonviolent felony when he or she was under the age of 18. See *infra* Table 2 and accompanying discussion. In [S.L. 2011-192](#) (H 642), the Justice Reinvestment Act of 2011 (referred to in this guide as the 2011 JRA), the General Assembly made numerous changes to North Carolina’s sentencing and probation laws, including changes to the criteria for obtaining an expunction in drug cases. (The 2011 JRA was amended by two later acts during the 2011 session, S.L. 2011-391 (H 22) and S.L. 2011-412 (H 335), but the amendments did not affect expunctions.) Most importantly for this discussion, the revisions allow a person to obtain an expunction of *any* felony drug possession offense if the person otherwise meets the requirements for an expunction. This change affects the three types of expunctions available specifically in drug cases: those involving a discharge and dismissal under G.S. 90-96, those involving not guilty determinations or dismissals, and those involving convictions. See *infra* Tables 10 through 12 and accompanying discussion.

Expunctions on Basis of Age

Misdemeanor Convictions for Offenses Committed before Age 18 or 21. G.S. 15A-145(a) and (b) authorize expunctions of misdemeanor convictions based on the age of the person at the time of the offense (see Table 1). A person who satisfies the requirements may obtain an expunction of multiple convictions if they arose out of the same transaction or occurrence or were consolidated for trial or judgment. See [Opinion Letter by North Carolina Attorney General to James J. Coman, SBI Director](#) (Oct. 13, 1995) (so stating).

The 2009 Consolidation Act revised G.S. 15A-145(a) to clarify that the offense to be expunged need only have occurred before the specified age, in most instances before the defendant turned 18 years old. Previously, the statute stated generally that the person was eligible for an expunction if he or she had not attained the indicated age, leaving it unclear whether the offense date, charging date, conviction date, or other date was controlling.

Table 1. Misdemeanor Convictions for Offenses Committed before Age 18 and 21

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Conviction of <ul style="list-style-type: none"> ○ misdemeanor other than traffic violation committed before age 18; or ○ misdemeanor possession of alcohol 	<ul style="list-style-type: none"> • Offense occurred before age 18 or 21, depending on offense • No prior convictions other than for traffic violation • Petition may not be filed until completion of any probation or two years after conviction, whichever is 	<ul style="list-style-type: none"> • G.S. 15A-145(a), (b) • AOC-CR-264 (Oct. 2010), AOC-CR-264I (Oct. 2010) (instructions)

under G.S. 18B-302(b)(1) committed before age 21	later <ul style="list-style-type: none"> • Good behavior and no convictions other than for traffic violation for two years after conviction • No outstanding restitution orders or judgments representing restitution 	
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Nonviolent Felony Convictions for Offenses Committed before Age 18. G.S. 15A-145.4 authorizes expunction of a conviction of a nonviolent felony by a first offender who was under age 18 at the time of the offense (see Table 2). This type of expunction was added by S.L. 2011-278 (S 397). The legislation states, without further qualification, that it is effective December 1, 2011; therefore, a person who satisfies the statutory criteria may obtain an expunction whether the offense or conviction occurred before or after that date.

“Nonviolent felony” is defined in G.S. 15A-145.4(a). The offense may not fall into one of nine categories—for example, it cannot be more serious than a Class H or I felony, a felony that includes assault as an essential element, a felony for which the convicted offender must register as a sex offender, or a felony drug offense involving methamphetamines, heroin, or sale, delivery, or possession with intent to sell or deliver cocaine. G.S. 15A-145.4(b) states that a person may obtain an expunction of multiple nonviolent felonies for which a person is convicted at the same session of court if none of the offenses occurred after the person had already been charged and arrested for the commission of a nonviolent felony.

A waiting period is required before the filing of an expunction petition, but the waiting period is not entirely clear. G.S. 15A-145.4(c) states that a petition may not be filed “earlier than four years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later.” G.S. 15A-145.4(e), which describes the findings the court must make, contains similar language. The AOC form expunction petition and order interprets the language as requiring the petitioner to wait four years after (i) the date of conviction or (ii) the date he or she completes the terms of his or her sentence, whichever is later. (The roman numerals are not included in the statute and are added to make the different interpretations easier to see.) That interpretation makes the language about the date of conviction superfluous because a person always will complete his or her sentence some time after the date of conviction; therefore, the person always would have to wait four years after completing his or her sentence. Alternatively, the statute could be construed as requiring a person to wait until (i) four years have passed from the date of conviction or (ii) the person completes the terms of his or her sentence, whichever occurs later. This guide favors the latter interpretation.

Most expunction statutes provide that the court “shall” or “must” grant an expunction petition if the court finds all of the statutory requirements have been met. G.S. 15A-145.4(e) states that the court “may” grant an expunction of a nonviolent felony conviction if the statutory requirements are satisfied. Use of the term “may” could be construed as giving the court discretion to deny an expunction petition even if the petitioner has met all of the statutory requirements. The difficulty with that construction is that the subsection indicates no basis for denial of a petition if the petitioner satisfies the statutory criteria.

Most expunction statutes also provide that an expunged record may not be used in future proceedings and that the person may take the position that he or she has no such record. In contrast, G.S. 15A-145.4(f) states that a person seeking law enforcement certification must disclose to the certifying commission any felony convictions expunged pursuant to G.S. 15A-145.4. State and local law enforcement agencies, as well as law enforcement certifying commissions, also may obtain records expunged pursuant to G.S. 145.4 for employment and certification purposes. See G.S. 15A-151(a)(4), (5), and (6); G.S. 17C-13(b); G.S. 17E-12(b); see also [AOC-CR-280](#) (Dec. 2011) (law enforcement application for verification of expunction under G.S. 15A-145.4).

Table 2. Nonviolent Felony Convictions for Offenses Committed before Age 18

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> Conviction of nonviolent felony as defined in G.S. 15A-145.4(a) 	<ul style="list-style-type: none"> Offense occurred before age 18 No prior convictions other than for traffic violation Petition may not be filed until the later of (i) four years after conviction or (ii) completion of any active sentence, period of probation, or post-release supervision^a Good moral character and no convictions other than traffic violation for the four-year waiting period No outstanding warrants or pending criminal cases Performance of 100 hours of community service after conviction, preferably related to conviction No outstanding restitution orders or judgments representing restitution High school diploma or equivalent No prior expunction of any kind 	<ul style="list-style-type: none"> G.S. 15A-145.4 AOC-CR-279 (Jan. 2012), AOC-CR-279I (Jan.. 2012) (instructions)
<p>^a For a discussion of the length of the waiting period required before the filing of an expunction petition, see the discussion in the text.</p>		

Older Misdemeanor Larceny Convictions. G.S. 15A-145(d1) authorizes expunction of older misdemeanor larceny convictions (see Table 3). This type of expunction was added by the 2009 Consolidation Act.

When initially passed, the new statute was inconsistent about the number of years that must have elapsed before the filing of the petition and the permissible extent of the petitioner's prior criminal record. One part of G.S. 15A-145(d1) required that the petitioner wait fifteen years following the misdemeanor larceny conviction, have no misdemeanor convictions (other than for a traffic violation) during that fifteen-year period, and have no prior felony convictions at any time; another part required that the petitioner wait ten years and have no prior felony or misdemeanor convictions (other than for a traffic violation) during that ten-year period. Effective for expunction petitions filed on or after October

1, 2010, the 2010 Technical Changes Act revised G.S. 15A-145(d1) to resolve the inconsistency in the waiting period, requiring that the petitioner wait fifteen years after a misdemeanor larceny conviction to file an expunction petition. Table 3 reflects this requirement. The 2010 Technical Changes Act left uncertain the length of the conviction-free period, however. G.S. 15A-145(d1) states that the petition for an expunction must show that the petitioner has not been convicted of a misdemeanor (other than for a traffic violation) for fifteen years *and* has never been convicted of a felony; but, the statute states further that the court must grant the petition if the person has not been convicted of a felony or misdemeanor (other than for a traffic violation) *during the fifteen years before the filing of the petition*. Table 3 reflects this uncertainty, stating only that the person must have no prior felony convictions for the period required by G.S. 15A-145(d1). The AOC form, AOC-CR-267, does not take a position on this inconsistency, requiring in one place (the petition portion of the form) that the petitioner state that he or she has never been convicted of a felony and in another place (the findings of fact portion of the form) that the petitioner has not been convicted of a felony during the fifteen-year period before the filing of the petition.

Table 3. Older Misdemeanor Larceny Convictions

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> Conviction of misdemeanor larceny under G.S. 14-72(a) more than 15 years before filing of petition 	<ul style="list-style-type: none"> Good behavior and no misdemeanor convictions (other than for traffic violation) for 15 years before filing of petition No prior felony convictions for period required by G.S. 15A-145(d1)^a No outstanding restitution orders or judgments representing restitution 	<ul style="list-style-type: none"> G.S. 15A-145(d1) AOC-CR-267 (Oct. 2010), AOC-CR-267I (Oct. 2010) (instructions)
<p>^a For a discussion of the required length of the conviction-free period, see the discussion in the text.</p>		

Discharge and Dismissal or Conviction of Gang Offenses. G.S. 14-50.29 and 14-15.30 allow the expunction of offenses involving gangs (see Table 4). The 2009 Consolidation Act moved the key expunction provisions from these statutes to G.S. 15A-145.1; the legislation did not make any new gang matters subject to expunction. The original statutes remain relevant, however, because they contain the discharge and dismissal requirements for the offenses, which are a precondition for expunctions of those proceedings.¹ The one substantive change made by the 2009 Consolidation Act was to clarify that the offense (rather than some other event) need only have occurred before the person turned 18 years old.

There is one form for expunction of gang offenses, but three different AOC forms for the discharge and dismissal itself. The different discharge and dismissal forms reflect differences in the permissible conditions of probation based on when the person committed the offense; the basic criteria for

¹ For a definition of a discharge and dismissal, see *supra* note --.

discharge and dismissal do not differ.

Table 4. Discharge and Dismissal or Conviction of Gang Offenses

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Discharge and dismissal of <ul style="list-style-type: none"> ○ any Class H felony under G.S. Ch. 14, Art. 13A; or ○ an enhanced offense under G.S. 14-50.22 	<ul style="list-style-type: none"> • Person must meet requirements for discharge and dismissal, including <ul style="list-style-type: none"> ○ offense occurred before person turned 18; ○ no prior convictions other than for traffic violation; ○ fulfillment of terms of probation; and ○ no prior discharge and dismissal under G.S. 14-50.29 • Person must meet requirements for expunction, including <ul style="list-style-type: none"> ○ petition may not be filed until completion of discharge and dismissal, for which G.S. 14-50.29 sets a period of supervised probation of at least one year; ○ person must have been of good behavior and had no convictions other than traffic violation during period of probation for offense in question; and ○ person has no outstanding restitution orders or judgments representing restitution 	<ul style="list-style-type: none"> • G.S. 15A-145.1, G.S. 14-50.29 • AOC-CR-269 (Jan. 2012) (expunction), AOC-CR-269I (Jan. 2012) (instructions) • AOC-CR-237 (Jan. 2012) (request for report of prior conditional discharge), AOC-CR-621A, AOC-CR-621B, or AOC-CR-621C (Dec. 2011) (conditional discharge), AOC-CR-622 (Jan. 2012) (disposition of conditional discharge)
<ul style="list-style-type: none"> • Conviction of <ul style="list-style-type: none"> ○ any Class H felony under G.S. Ch. 14, Art. 13A; or ○ an enhanced offense under G.S. 14-50.22 	<ul style="list-style-type: none"> • Offense occurred before person turned 18 • No prior convictions other than for traffic violation • Petition may not be filed earlier than completion of probation or two years after conviction, whichever is later • Good behavior and no convictions other than traffic violation for two years after conviction • No outstanding restitution orders or judgments representing restitution 	<ul style="list-style-type: none"> • G.S. 15A-145.1, G.S. 14-50.30 • AOC-CR-269 (Oct. 2010), AOC-CR-269I (Oct. 2010) (instructions)

Discharge and Dismissal of Cyberbullying Offenses. G.S. 14-458.1(c) authorizes expunction of a cyberbullying offense (see Table 5). This type of expunction was added as part of [S.L. 2009-551](#) (H 1261), which created the offense of cyberbullying and the accompanying discharge, dismissal, and expunction provisions.² The act applies to offenses committed on or after December 1, 2009. There is not a specific AOC form for this type of expunction, but AOC-CR-264, the form for obtaining an expunction of a dismissed proceeding, can be used, supported with documentation that the petitioner received a

². For a definition of a discharge and dismissal, see *supra* note --.

discharge and dismissal of a cyberbullying offense.

Table 5. Discharge and Dismissal of Cyberbullying Offense

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Discharge and dismissal pursuant to G.S. 14-458.1(c) of cyberbullying offense 	<ul style="list-style-type: none"> • Person must meet requirements for discharge and dismissal, including <ul style="list-style-type: none"> ○ offense must have occurred before age 18; and ○ fulfillment of any terms of probation • Person must meet requirements for expunction under G.S. 15A-146 (see Table 6) 	<ul style="list-style-type: none"> • G.S. 14-458.1(c), 15A-146 • AOC-CR-264 (Oct. 2010) (expunction), AOC-CR-264I (Oct. 2010) (instructions) • AOC-CR-622 (Jan. 2012) (disposition of conditional discharge)

Expunctions of Dismissals and Similar Dispositions

Dismissal or Finding of Not Guilty of Misdemeanors, Felonies, and Infractions. G.S. 15A-146(a) and (a1) allow expunction of dismissals and findings of not guilty or responsible (see Table 6). Both G.S. 15A-146(a) and (a1) allow expunction of dismissed charges although the petitioner was convicted of other charges at the same time (as long as the conviction was not for a felony, which disqualifies a person from an expunction). See *In re Kearney*, 174 N.C. App. 213 (2005). Both subsections also appear to allow expunction of multiple dismissals. G.S. 15A-146(a1) explicitly allows expunction of multiple dismissals, whether related or unrelated, if they meet the requirements of that subsection. G.S. 15A-146(a) may allow expunction of multiple dismissals and findings of not guilty or responsible if the alleged offenses arose out of the same transaction or occurrence or were consolidated for judgment. The AOC form, AOC-CR-264, appears to reflect this position. See also generally [Opinion Letter by North Carolina Attorney General to James J. Coman, SBI Director](#) (Oct. 13, 1995) (stating that a person may obtain an expunction of multiple convictions under G.S.15A-145 if they arose out of the same transaction or occurrence or were consolidated for trial or judgment); *In re Robinson*, 172 N.C. App. 272 (2005) (holding that a person may not obtain an expunction of dismissals of multiple unrelated charges for offenses occurring over a number of years; declining to rule whether statute permits expunction of “multiple related charges arising from a single occurrence or which have been consolidated for trial”).

The 2009 Consolidation Act revised G.S. 15A-146(a) by changing the statutory references for prior expunctions that bar an expunction under that subsection. Before passage of the act, a person could not obtain this type of expunction if he or she had received an expunction under G.S. 15A-145, G.S. 15A-146, or G.S. 90-96. The revised provision still bars an expunction if the person received an expunction under G.S. 15A-145 or G.S. 15A-146, but it omits any reference to G.S. 90-96 on expunction of drug-related matters. Instead, it refers to the expunction statutes on drug-related matters (G.S. 15A-145.2 and 15A-145.3, discussed later in this guide) added by the 2009 Consolidation Act. Consequently, a prior expunction under G.S. 90-96, obtained before passage of the 2009 Consolidation Act, might not bar an expunction under G.S. 15A-146(a).

The 2009 Consolidation Act also amended G.S. 15A-146(a1) on expunction of multiple dismissals and findings of not guilty or responsible. First, as with G.S. 15A-146(a), the 2009 Consolidation Act revised the prior expunctions that disqualify a person from receiving an expunction under G.S. 15A-146(a1), deleting any reference to G.S. 90-96. Second, the 2009 Consolidation Act exempted from the prior-expunction bar a prior expunction under G.S. 15A-146(a1) if (i) it occurred before October 1, 2005, and (ii) it was for an offense that occurred within the same 12-month period, or was dismissed at the same term of court, as the offenses that are the subject of the current expunction petition. Thus, this provision allows a person who obtained an expunction under G.S. 15A-146(a1) before October 1, 2005, to go back and obtain an expunction of additional charges during the surrounding 12-month period or of charges disposed of during the same term of court.³

Table 6. Dismissal or Finding of Not Guilty of Misdemeanors, Felonies, and Certain Infractions

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Dismissal or finding of not guilty or not responsible of <ul style="list-style-type: none"> ○ infraction under G.S. 18B-302(i) before Dec. 1, 1999; or ○ misdemeanor or felony 	<ul style="list-style-type: none"> • No prior felony conviction • No prior expunction under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-146 	<ul style="list-style-type: none"> • G.S. 15A-146(a) • AOC-CR-264 (Oct. 2010), AOC-CR-264I (Oct. 2010) (instructions)
<ul style="list-style-type: none"> • Dismissal or finding of not guilty or not responsible of multiple charges that <ul style="list-style-type: none"> ○ occurred during 12-month period; or ○ were disposed of at the same term of court, regardless of offense date 	<ul style="list-style-type: none"> • No prior felony conviction • No prior expunction under G.S. 15A-145, 15A-145.1, 15A-145.2, or 15A-145.3 • No prior expunction under G.S. 15A-146(a1) except as indicated therein^a 	<ul style="list-style-type: none"> • G.S. 15A-146(a1) • AOC-CR-264 (Oct. 2010), AOC-CR-264I (Oct. 2010) (instructions)
<p>^a For a discussion of the meaning of the bar on prior expunctions under G.S. 15A-146(a1), see the discussion in the text and accompanying footnote.</p>		

3. The discussion in the text attempts to describe the impact of the 2009 Consolidation Act on expunction of offenses that occurred before October 1, 2005, but the statutory references used in G.S. 15A-146(a1) make the matter unclear. G.S. 15A-146(a1) bars a second expunction under that “subsection,” meaning G.S. 15A-146(a1), except if the expunction occurred before October 1, 2005. The discussion in the text reflects this language. The difficulty with this approach, however, is that G.S. 15A-146(a1) did not take effect until October 1, 2005, so it would be impossible for a person to have obtained an expunction under that subsection before then. Alternatively, it could be argued that the General Assembly intended to allow an expunction under G.S. 15A-146(a1) even though the person had obtained an expunction under G.S. 15A-146(a) for a single offense before October 1, 2005. Such an interpretation suggests further that a person ordinarily cannot obtain an expunction under G.S. 15A-146(a1) if he or she received a prior expunction under G.S. 15A-146(a). The AOC form reflects this position. See AOC-CR-264 (Oct. 2010) (stating as requirement for expunction under G.S. 15A-146(a) or (a1) that person not have received prior expunction under G.S. 15A-146 except for expunctions before Oct. 1, 2005). This interpretation makes practical sense, although it does not reflect the literal terms of G.S. 15A-146(a1). See *supra* note -- (discussing how courts may interpret ambiguous statutes).

Charges Resulting from Identity Theft. G.S. 15A-147 allows expunction of dismissals and findings of not guilty if the underlying charge against the person was the result of identity theft (see Table 7). The statute also authorizes an expunction when a conviction resulting from identity theft is set aside. Reflecting that the person did not engage in the charged conduct, the statute imposes no other requirements for an expunction—e.g., no waiting period, no limit on prior expunctions, and no requirement of a conviction-free-record.

Table 7. Charges Resulting from Identity Theft

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> Finding of not guilty, dismissal, or setting aside of conviction of infraction, misdemeanor, or felony resulting from another person's use of identifying information of named person without that person's permission 	<ul style="list-style-type: none"> None 	<ul style="list-style-type: none"> G.S. 15A-147 AOC-CR-263 (Jan. 2012)

DNA Records. North Carolina law provides for expunction of DNA records and samples (see Table 8). Article 13 of Chapter 15A of the General Statutes (G.S. 15A-266 through G.S. 15A-270.1) authorizes the taking of DNA samples for some offenses following conviction and for some offenses at the time of arrest. The authorization to take DNA samples on arrest was added by [S.L. 2010-94](#) (H 1403).

For DNA samples taken following conviction, G.S. 15A-148 authorizes expunction of the samples and associated records following a final order of an appellate court reversing and dismissing the conviction or a pardon of innocence. There is not an AOC form for this type of expunction.

For DNA samples taken on arrest, G.S. 15A-266.3A provides two procedures for expunction. Before June 1, 2012, a person must submit a request (using AOC-CR-925M) to the prosecuting district attorney if the grounds identified in G.S. 15A-266.3A(h)(1)d. or e. apply. The prosecuting attorney then must seek an expunction (using AOC-CR-640). Also before June 1, 2012, the prosecuting attorney must seek an expunction, without request, if the grounds identified in G.S. 15A-266.3A(h)(1)a., b., or c. apply. Beginning June 1, 2012, the prosecuting district attorney must seek an expunction, without request, if any of the grounds in G.S. 15A-266.3A(h)(1) apply.⁴

⁴ G.S. 15A-146(b1) and (b2) also provide for expunction of DNA records following dismissal of a case by the trial court. These provisions were added in 2001 by [S.L. 2001-282](#) (H 884) and, at the time, were the only provisions addressing expunction following dismissal of a case at the trial level. G.S. 15A-266.3A now authorizes expunction of DNA samples taken on arrest if either a court or district attorney dismisses the charges. That statute contains no preconditions for relief (unlike G.S. 15A-146, which contains both prior conviction and prior expunction bars). G.S. 15A-146(b1) and (b2) may offer an additional avenue for relief in the limited situation in which a person has DNA samples taken following conviction (not merely at the time of arrest) and in a post-conviction proceeding a trial court dismisses the case.

Table 8. DNA Records

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • DNA records and samples taken from person convicted or found not guilty by reason of insanity for offenses listed in G.S. 15A-266.4(b) if <ul style="list-style-type: none"> ○ final order by appellate court reversing and dismissing conviction of offense; or ○ pardon of innocence 	<ul style="list-style-type: none"> • Expunction order does not apply to DNA required to be in the state's database based on other offenses 	<ul style="list-style-type: none"> • G.S. 15A-148
<ul style="list-style-type: none"> • DNA records and samples taken on arrest of person for offenses listed in G.S. 15A-266.3A if <ul style="list-style-type: none"> ○ charge was dismissed; ○ person was acquitted; ○ person was convicted of lesser misdemeanor for which taking of DNA is not required; ○ no charge was filed within any statute of limitations; or ○ no conviction has occurred, at least three years have passed since the date of arrest, and no active prosecution is occurring 	<ul style="list-style-type: none"> • Expunction order does not apply to DNA required to be in the state's database based on other offenses • Expunction order does not apply to physical evidence obtained from a sample if evidence relating to another person would be destroyed 	<ul style="list-style-type: none"> • G.S. 15A-266.3A • AOC-CR-640 (July 2011), AOC-CR-925M (July 2011)

After Pardon of Innocence. G.S. 15A-149 allows expunction of a conviction for which a person has received a pardon of innocence (see Table 9). Reflecting that a person who is eligible for this type of expunction has been declared innocent of the charges, the statute imposes no other requirements—e.g., no waiting period, no limit on prior expunctions, and no requirement of a conviction-free-record. A person who receives a pardon of innocence also is entitled to have DNA records or samples destroyed under G.S. 15A-148, discussed under DNA Records, above. For a further discussion of pardons, see *infra* -----.

Table 9. After Pardon of Innocence

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Conviction of crime for which person has received pardon of innocence 	<ul style="list-style-type: none"> • None 	<ul style="list-style-type: none"> • G.S. 15A-149 • AOC-CR-265 (Jan. 2012)

Expunctions of Drug-Related Offenses

Discharge and Dismissal of Controlled Substance, Drug Paraphernalia, and Toxic Vapor Offenses. This type of drug-related expunction involves offenses for which a person has received a discharge and dismissal within the meaning of the applicable statutes (see Tables 10(a) and 10(b)).⁵ G.S. 90-96(a) and (a1) and the corresponding expunction provisions in G.S. 15A-145.2(a) address controlled substance and drug paraphernalia offenses (although offenses involving drug paraphernalia are addressed in another article in Chapter 90). G.S. 90-113.4(a) and (a1) and the corresponding expunction provisions in G.S. 15A-145.3(a) address toxic vapor offenses. The discharge, dismissal, and expunction provisions for the two sets of offenses are discussed together because the requirements are similar. Some differences exist, however, between the requirements for controlled substance and drug paraphernalia offenses (shown in Table 10(a)) and the requirements for toxic vapor offenses (shown in Table 10(b)). In addition, for both sets of offenses two different discharge and dismissal opportunities are available, under subsection (a) and (a1) of G.S. 90-96 for controlled substance and drug paraphernalia offense and under subsections (a) and (a1) of G.S. 90-113.4 for toxic vapor offenses.

The 2009 Consolidation Act did not make any new matters in subsection (a) of G.S. 90-96 and 90-113.14 subject to expunction; instead, it moved the expunction procedures from G.S. Chapter 90 to new G.S. 15A-145.2(a) and 15A-145.3(a), respectively. The statutes in G.S. Chapter 90 remain relevant, however, because they contain the discharge and dismissal requirements, which are a precondition for expunction. In contrast, the 2009 Consolidation Act appears to have made a substantive change to subsection (a1) of G.S. 90-96 and 90-113.4 by making it clear, in those subsections and in new G.S. 15A-145.2(a) and 15A-145.3(a), that a person may receive a discharge, dismissal, and expunction for offenses meeting the stated criteria. Previously, subsection (a1) of G.S. 90-96 and 90-113.14 referred to discharge and dismissal but did not specify any procedure for implementing that disposition.

The 2010 Technical Changes Act appears to have made a substantive change for all of the offenses by repealing subdivision (3) of G.S. 15A-145.2(a) and G.S. 15A-145.3(a) and adding subdivision (3a) in its place. The principal effect of the change was to eliminate the requirement, in repealed subdivision (3), that petitioners obtain an affidavit from local court system or law enforcement personnel attesting to the absence of prior disqualifying convictions; instead, under new subdivision (3a), petitioners must obtain a criminal record check on a form issued by the Administrative Office of the Courts. The repeal of subdivision (3) had the further effect of eliminating broad language disqualifying a person from obtaining an expunction of a discharge and dismissal if he or she was convicted of a felony or misdemeanor *before* deferral of the proceedings. Subdivision (1) of G.S. 15A-145.2(a) and 15A-145.3(a) still require an affidavit by the petitioner that he or she “has been of good behavior during the period of probation *since the decision to defer further proceedings* on the offense in question and has not been convicted of any felony or misdemeanor other than a traffic violation.” The italicized language appears to relate both to the good behavior and conviction conditions—that is, the person must be conviction-free *since the decision to defer*. This interpretation is consistent with the wording of other expunction statutes. See G.S. 15A-145 (requiring in subsection (a) that affidavit show that petitioner has been of good behavior for two years *since the date of conviction* and has not been convicted of any felony or

⁵ For a definition of a discharge and dismissal, see *supra* note --.

misdemeanor other than a traffic violation; and providing in subsection (b) that the court must find that the petitioner has been of good behavior and has been conviction-free for two years from the date of conviction); G.S. 15A-145.1 (similar phrasing). (The AOC form does not take a position on this question. It states that the person must attach the affidavits required by G.S. 15A-145.2(a) and G.S. 145.3(a); it does not detail what the affidavits must show about the person's prior record.)

The 2011 JRA made significant changes to the discharge and dismissal requirements for the controlled substance and drug paraphernalia offenses in subsection (a) of G.S. 90-96. First, amended G.S. 90-96(a) allows a discharge, dismissal, and expunction of any misdemeanor possession offense under Article 5 of Chapter 90 *or* any felony drug possession offense under G.S. 90-95(a)(3). Previously, felony possession of less than one gram of cocaine was the only felony offense subject to a discharge and dismissal under G.S. 90-96(a). A discharge and dismissal also remains permissible for misdemeanor drug paraphernalia offenses. Second, amended G.S. 90-96(a) prohibits an expunction if the petitioner has been convicted of a misdemeanor controlled substance, drug paraphernalia, or toxic vapor offense *or* any felony offense. Previously, a prior felony conviction barred a discharge or dismissal only if it involved those substances or items. Third, if a person meets the criteria for a discharge and dismissal under G.S. 90-96(a) and the person consents, the court *must* use the discharge and dismissal procedure.

The 2011 JRA also revised subsection (a1) of G.S. 90-96, but the change itself was not substantive. The 2011 JRA deleted the description of offenses covered by subsection (a1) and, in its place, stated that the subsection covers the same offenses as under subsection (a); this change has no effect because the deleted language covered the same offenses as those now covered under revised subsection (a). Still, the 2011 JRA clarified the meaning of subsection (a1) by changing the criteria for a discharge and dismissal under subsection (a) of G.S. 90-96, which had the effect of further differentiating it from one under subsection (a1) of G.S. 90-96. The disqualifying convictions for a discharge and dismissal under subsection (a1) are narrower than those under subsection (a); and, while a discharge and dismissal is mandatory under subsection (a), it is discretionary with the trial judge under subsection (a1).

The 2011 JRA made no changes to the discharge and dismissal requirements for toxic vapor offenses in either subsections (a) and (a1) of G.S. 90-113.14.

The 2011 JRA provisions on discharge and dismissal under G.S. 90-96(a) or (a1) apply to people who enter a plea or who are found guilty on or after January 1, 2012. For people who entered a plea or who were found guilty before January 1, 2012, they still are eligible to obtain an expunction if they obtained a discharge and dismissal under the criteria then in effect and meet the other criteria for expunction (for example, being 21 or younger at the time of the offense). There is one AOC form for expunction of a discharge and dismissal under G.S. 90-96(a), but three different AOC forms for the discharge and dismissal itself. The different discharge and dismissal forms reflect differences in the permissible conditions of probation based on when the person committed the offense. All three forms contain the same criteria for obtaining a discharge and dismissal, which apply to pleas and findings of guilt on or after January 1, 2012 (when the revised criteria for obtaining a discharge and dismissal took effect.)

Table 10(a). Discharge and Dismissal of Controlled Substances and Drug Paraphernalia Offenses under G.S. 90-96(a) and (a1) (for pleas and findings of guilt on or after Jan. 1, 2012)

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Discharge and dismissal pursuant to G.S. 90-96(a) of <ul style="list-style-type: none"> ○ misdemeanor possession of a controlled substance within Schedules I through VI of Article 5 of G.S. Ch. 90; ○ felony under G.S. 90-95(a)(3); or ○ misdemeanor possession of drug paraphernalia under G.S. 90-113.22 	<ul style="list-style-type: none"> • Person must meet requirements for discharge and dismissal, including <ul style="list-style-type: none"> ○ no prior felony conviction; ○ no prior conviction under Article 5 of G.S. Ch. 90 ○ no prior conviction under any federal or state statute for substance in Articles 5 or 5A or paraphernalia in Article 5B of G.S. Ch. 90; ○ no prior discharge and dismissal under G.S. 90-96 or 90-113.14; and ○ fulfillment of terms of probation • Person must meet requirements for expunction, including <ul style="list-style-type: none"> ○ offense occurred when person was age 21 or younger; ○ good behavior during period of probation; and ○ no conviction (other than for traffic violation) since decision to defer proceedings^a 	<ul style="list-style-type: none"> • G.S. 15A-145.2(a) and 90-96(a), (b) • AOC-CR-266 (Jan. 2012) (expunction), AOC-CR-266I (Jan. 2012) (instructions) • AOC-CR-237 (Jan. 2012) (request for report of prior conditional discharge), AOC-CR-619A, AOC-CR-619B, or AOC-CR-619C (Dec. 2011) (conditional discharge), AOC-CR-622 (Jan. 2012) (disposition of conditional discharge)
<ul style="list-style-type: none"> • Discharge and dismissal pursuant to G.S. 90-96(a1) of <ul style="list-style-type: none"> ○ misdemeanor possession of a controlled substance within Schedules I through VI of Article 5 of G.S. Ch. 90; ○ felony under G.S. 90-95(a)(3); or • misdemeanor possession of drug paraphernalia under G.S. 90-113.22 	<ul style="list-style-type: none"> • Person must meet requirements for discharge and dismissal, including <ul style="list-style-type: none"> ○ no prior conviction or discharge and dismissal for offense committed within seven years of current offense in violation of G.S. 90-95(a)(1), 90-95(a)(2), 90-95(a)(3), 90-113.10, 90-113.11, 90-113.12, or 90-113.22; and ○ fulfillment of terms of probation, which must be for a minimum period of one year and include completion of drug education school within first 150 days of probation unless waived by court • Person must meet requirements for expunction, including <ul style="list-style-type: none"> ○ offense occurred when person was age 21 or younger; ○ good behavior during period of probation for offense in question; and 	<ul style="list-style-type: none"> • G.S. 15A-145.2(a) and 90-96(a1), (b) • AOC-CR-266 (Jan. 2012), AOC-CR-266I (Jan. 2012) (instructions) • AOC-CR-237 (Jan. 2012) (request for report of prior conditional discharge), AOC-CR-622 (Jan. 2012) (disposition of conditional discharge)

	<ul style="list-style-type: none"> ○ no conviction (other than for traffic violation) since decision to defer proceedings^b 	
<p>^a See discussion in text about prior convictions.</p> <p>^b See discussion in text about prior convictions.</p>		

Table 10(b). Discharge and Dismissal of Toxic Vapor Offenses

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Discharge and dismissal pursuant to G.S. 90-113.14(a) of <ul style="list-style-type: none"> ○ inhaling or possessing toxic vapor substance in violation of G.S. Ch. 90, Art. 5A 	<ul style="list-style-type: none"> • Person must meet requirements for discharge and dismissal, including <ul style="list-style-type: none"> ○ no prior conviction under Article 5A of G.S. Ch. 90; ○ no prior conviction under any federal or state statute for substance in Articles 5 or 5A or paraphernalia in Article 5B of G.S. Ch. 90; ○ no prior conviction for substance in Articles 5 or 5A or paraphernalia in Article 5B of G.S. Ch. 90; ○ no prior discharge and dismissal under G.S. 90-96 or 90-113.14; and ○ fulfillment of terms of probation • Person must meet requirements for expunction, including <ul style="list-style-type: none"> ○ offense occurred when person was age 21 or younger; ○ good behavior during period of probation; and ○ no conviction (other than for traffic violation) since decision to defer proceedings^a 	<ul style="list-style-type: none"> • G.S. 15A-145.3(a) and 90-113.4(a), (b) • AOC-CR-268 (Jan. 2012), AOC-CR-268I (Jan. 2012) (instructions) • AOC-CR-237 (Jan. 2012) (request for report of prior conditional discharge), AOC-CR-622 (Jan. 2012) (disposition of conditional discharge)
<ul style="list-style-type: none"> • Discharge and dismissal pursuant to G.S. 90-113.14(a1) of <ul style="list-style-type: none"> ○ any offense in G.S. 90-113.10 or 90-113.11 	<ul style="list-style-type: none"> • Person must meet requirements for discharge and dismissal, including <ul style="list-style-type: none"> ○ no prior conviction or discharge and dismissal for offense committed within seven years of current offense in violation of G.S. 90-95(a)(1), 90-95(a)(2), 90-95(a)(3), 90-113.10, 90-113.11, 90-113.12, or 90-113.22; and ○ fulfillment of terms of probation, which must be for a minimum 	<ul style="list-style-type: none"> • G.S. 15A-145.3(a) and 90-113.4(a1), (b) • AOC-CR-268 (Jan. 2012), AOC-CR-268I (Jan. 2012) (instructions) • AOC-CR-237 (Jan. 2012) (request for report of prior conditional discharge), AOC-CR-622 (Jan. 2012) (disposition of conditional discharge)

	<p>period of one year and include completion of drug education school within first 150 days of probation unless waived by court</p> <ul style="list-style-type: none"> • Person must meet requirements for expunction, including <ul style="list-style-type: none"> ○ offense occurred when person was age 21 or younger; ○ good behavior during period of probation for offense in question; and ○ no conviction (other than for traffic violation) since decision to defer proceedings^b 	
<p>^a See discussion in text about prior convictions. ^b See discussion in text about prior convictions.</p>		

Finding of Not Guilty or Dismissal of Certain Drug-Related Offenses. This type of drug-related expunction involves findings of not guilty or dismissals (see Table 11). G.S. 90-96(d) and G.S. 15A-145.2(b) address controlled substances offenses, and G.S. 90-113.4(d) and G.S. 15A-145.3(b) address toxic vapor and drug paraphernalia offenses (although drug paraphernalia offenses themselves are addressed in a separate article of G.S. Chapter 90). The expunction provisions for these offenses are discussed together because the requirements are essentially the same. Differences are reflected in the accompanying table.

The 2009 Consolidation Act did not make any new matters in these statutes subject to expunction; instead, it moved the key expunction provisions from G.S. Chapter 90 to new G.S. 15A-145.2(b) and 15A-145.3(b). The act revised the expunction requirements, however, to clarify that the alleged offense (rather than some other event) need only have occurred when the person was 21 or younger.

The 2011 JRA broadened the controlled substance offenses eligible for an expunction. (It did not modify the drug paraphernalia and toxic vapor expunction provisions.) Under the revised statutes, a person may obtain an expunction of any felony controlled substance possession charge, not just felony possession of less than one gram of cocaine, as well as misdemeanor controlled substance possession charges. The 2011 JRA states that this change applies only to people who enter a plea or who are found guilty on or after January 1, 2012. The language likely means that the revised criteria apply as well to findings of not guilty and dismissals entered on or after January 1, 2012.

Table 11. Finding of Not Guilty or Dismissal of Controlled Substance, Drug Paraphernalia, and Toxic Vapor Offenses

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Dismissal or finding of not guilty <u>on or after</u> Jan. 1, 2012, of <ul style="list-style-type: none"> ○ misdemeanor possession of a controlled substance within Schedules I through VI of Article 5 of G.S. Ch. 90; and ○ felony under G.S. 90-95(a)(3) • Dismissal or finding of not guilty <u>before</u> Jan. 1, 2012, of <ul style="list-style-type: none"> ○ misdemeanor possession of a controlled substance within Schedules II through VI of Art. 5 of G.S. Ch. 90; and ○ felony possession of less than 1 gram of cocaine under G.S. 90-95(a)(3) • Dismissal or finding of not guilty of <ul style="list-style-type: none"> ○ misdemeanor under G.S. Ch. 90, Art. 5A (toxic vapors); and ○ possession of drug paraphernalia under G.S. 90-113.22 	<ul style="list-style-type: none"> • Offense allegedly occurred when person was age 21 or younger 	<ul style="list-style-type: none"> • For controlled substance offenses, <ul style="list-style-type: none"> ○ G.S. 15A-145.2(b) and 90-96(d) ○ AOC-CR-266 (Jan. 2012), AOC-CR-266I (Jan. 2012) (instructions) • For toxic vapor and drug paraphernalia offenses, <ul style="list-style-type: none"> ○ G.S. 15A-145.3(b) and 90-113.14(d) ○ AOC-CR-268 (Jan. 2012), AOC-CR-268I (Jan. 2012) (instructions)

Conviction of Controlled Substance, Drug Paraphernalia, and Toxic Vapor Offenses. This last type of drug-related expunction applies to convictions (see Tables 12(a) and (b)). The expunction procedures for offenses covered by G.S. 90-96(e) and 15A-145.2(c), which cover controlled substances and drug paraphernalia, and G.S. 90-113.14(e) and 15A-145.3(c), which cover toxic vapor offenses, are discussed together because the requirements are similar. Differences are reflected in the accompanying tables.

The 2009 Consolidation Act did not make any new matters in this category subject to expunction; instead, it moved the key expunction provisions from G.S. Chapter 90 to new G.S. 15A-145.2(c) and 15A-145.3(c). In transferring the language, however, the act made one potentially important change. The change is the same in both of the new statutes; for ease of discussion, G.S. 15A-145.2(c) is used to explain the impact of the change. Former G.S. 90-96(e) stated that a person could obtain one expunction under “this section.” The term “section” is generally construed to refer to the statute number, in this instance G.S. 90-96. New G.S. 15A-145.2(c) states that a person may obtain one expunction under “this subsection.” The term “subsection” is generally construed to refer to the lettered provision of a statute, in this instance G.S. 15A-145.2(c). The change potentially has two effects. One, an expunction under other subsections of new G.S. 15A-145.2 may not preclude an expunction under G.S. 15A-145.2(c). (An expunction under any subsection of G.S. 15A-145.2 would bar an expunction of a dismissal under G.S.

15A-146, discussed above under “Expunction of Dismissals and Similar Dispositions,” because the latter statute explicitly says so). Two, a prior expunction under G.S. 90-96(e) is not listed as a bar to an expunction under G.S. 15A-145.2(c).

The 2011 JRA modified the criteria for expunction of controlled substance and drug paraphernalia convictions. (It did not modify the toxic vapor expunction provisions.) On the one hand, it broadened eligibility by expanding the offenses subject to expunction. Under the revised statutes, a person may obtain an expunction of any felony controlled substance possession conviction, not just a conviction of felony possession of less than one gram of cocaine, as well as misdemeanor possession of controlled substance and misdemeanor drug paraphernalia convictions. On the other hand, the 2011 JRA narrowed eligibility by expanding the prior offenses that bar an expunction, shown in Table 12(a). The changes apply to pleas and findings of guilt on or after January 1, 2012. If a person was convicted of an offense before that date, he or she is subject to the previous criteria for an expunction.

In revising the list of disqualifying convictions for expunctions of controlled substance and drug paraphernalia convictions, the 2011 JRA did not fully address inconsistent language about the significance of prior convictions. G.S. 15A-145.2(c) states, toward the end of that subsection, that the petitioner must not have been convicted of *any* felony or misdemeanor other than a traffic violation. The applicable AOC form includes this language as a condition for expunction. The language is difficult to reconcile, however, with the opening language of G.S. 15A-145.2(c), which lists the specific prior offenses that bar an expunction. The corresponding provisions of G.S. 90-96(e) include the same list of disqualifying convictions and contain no language requiring that the person be entirely conviction-free. Other changes made by the 2011 JRA also suggest that the General Assembly did not intend to require that the petitioner be entirely conviction-free. In addition to modifying the list of disqualifying convictions at the beginning of G.S. 15A-145.2(c), the 2011 JRA inserted language later in the subsection that if the court determines, among other things, “that the petitioner has no disqualifying previous convictions as set forth in this subsection . . .,” it must enter an order of expunction. The difficulty arises from the General Assembly’s failure to delete the above-mentioned language, several lines later, that the court must find that the person has no prior felony or misdemeanor convictions (other than for a traffic violation). This guide takes the view that the specific provisions on disqualifying convictions better reflect the General Assembly’s intent and may be followed by the courts. *See supra* note -- (discussing how courts may interpret conflicting language in statutes). The dangling general language about prior convictions remains a part of G.S. 15A-145.2(c), however, and could be viewed by the courts as binding until explicitly repealed.⁶

G.S. 15A-145.3(c) on expunction of toxic vapor convictions, although not modified by the 2011 JRA, contains a similar inconsistency. It enumerates the disqualifying prior convictions at the beginning of the subsection but also states toward the end that a person may not have any prior convictions. The corresponding provisions of G.S. 90-113.14(e) include the same list of specific disqualifying convictions and no language requiring that the person be entirely conviction-free.

⁶ The 2011 JRA also created an inconsistency in the list of disqualifying convictions. Revised G.S. 15A-145.2(c) states that a person may not have a conviction under G.S. Ch. 90, while G.S. 90-96(e) continues to state that a person may not have a conviction under “this Article,” meaning Article 5 of G.S. Ch. 90. The guide opts for the former language, which has the effect of making prior toxic vapor convictions a bar, because the General Assembly affirmatively added the language.

For both types of expunctions, the person must have been 21 years of age or younger when he or she committed the offense in question. *See In re Spencer*, 140 N.C. App. 776 (2000) (interpreting language in G.S. 90-96(e) (now a part of G.S. 15A-145.2(c)) as imposing this requirement). Because of its similarities, G.S. 90-113.14(e) (now a part of G.S. 15A-145.3(c)) likely would be interpreted as imposing the same age requirement.

Table 12(a). Conviction of Controlled Substance and Drug Paraphernalia Offenses

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Conviction <u>on or after</u> Jan. 1, 2012, of <ul style="list-style-type: none"> ○ misdemeanor possession of a controlled substance within Schedules I through VI of Article 5 of G.S. Ch. 90; ○ felony under G.S. 90-95(a)(3); or ○ possessing drug paraphernalia under G.S. 90-113.22 	<ul style="list-style-type: none"> • No prior conviction for:^a <ul style="list-style-type: none"> ○ felony, ○ offense under G.S. Ch. 90, or ○ offense under any federal or state statute for controlled substance in any schedule in G.S. Ch. 90 or paraphernalia in Art. 5B of G.S. Ch. 90 • No prior expunction under G.S. 15A-145.2(c) • Petition may not be filed for at least 12 months after conviction • Completion of drug education program unless waived by court • Good behavior since conviction • Commission of offense when age 21 or younger 	<ul style="list-style-type: none"> • G.S. 15A-145.2(c), 90-96(e) • AOC-CR-266 (Jan. 2012), AOC-CR-266I (Jan. 2012) (instructions)
<ul style="list-style-type: none"> • Conviction <u>before</u> Jan. 1, 2012, of <ul style="list-style-type: none"> ○ misdemeanor possession of a controlled substance in Schedules II through VI of G.S. Ch. 90, Art. 5; ○ felony possession of less than 1 gram of cocaine under 90-95(a)(3); or ○ possessing drug paraphernalia under G.S. 90-113.22 	<ul style="list-style-type: none"> • No prior conviction for:^b <ul style="list-style-type: none"> ○ offense under Article 5 of G.S. Ch. 90, or ○ offense under any federal or state statute for controlled substance in any schedule in Art. 5 or paraphernalia in Art. 5B of G.S. Ch. 90; • No prior expunction under G.S. 15A-145.2(c) • Petition may not be filed for at least 12 months after conviction • Completion of drug education program unless waived by court • Good behavior since conviction • Commission of offense when age 21 or younger 	<ul style="list-style-type: none"> • G.S. 15A-145.2(c), 90-96(e) (before 2011 JRA revisions) • AOC-CR-266 (Jan. 2012), AOC-CR-266I (Jan. 2012) (instructions)
<p>^a For a discussion of whether the petitioner must be entirely conviction-free (other than for a traffic conviction). see discussion in text.</p> <p>^b See note <i>a</i>.</p>		

Table 12(b). Conviction of Toxic Vapor Offenses

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> Conviction of misdemeanor under G.S. Ch. 90, Art. 5A (toxic vapors) 	<ul style="list-style-type: none"> No prior conviction for:^a <ul style="list-style-type: none"> offense under Art. 5 or 5A of G.S. Ch. 90, or offense under any federal or state statute for substances in Article 5 or paraphernalia in Art. 5B of G.S. Ch. 90 Person must not have received prior expunction under G.S. 15A-145.3(c) Petition may not be filed for at least 12 months after conviction Person completed drug education program unless waived by court Person has been on good behavior since conviction Person must have committed offense when 21 or younger 	<ul style="list-style-type: none"> G.S. 15A-145.3(c), 90-113.14(e) AOC-CR-268 (Jan. 2012), AOC-CR-268I (Jan. 2012) (instructions)
<p>^a For a discussion of whether the petitioner must be entirely conviction-free (other than for a traffic conviction), see discussion in text.</p>		

Expunctions of Delinquency Matters

This part reviews the criteria for expunctions of delinquency proceedings—that is, proceedings in which a juvenile is alleged or adjudicated to be delinquent (see Table 13). Generally, a delinquency adjudication is not considered a criminal conviction and therefore does not trigger the sorts of collateral consequences that follow a criminal conviction. Delinquency proceedings also are confidential and, unless an exception applies, may not be disclosed regardless of whether the proceedings are expunged. Still, expunction of court records may benefit a person who was the subject of delinquency proceedings. For a further discussion of expunctions of juvenile proceedings, see Lou A. Newman, Alyson Grine & Eric J. Zogry, [North Carolina Juvenile Defender Manual](#) Ch. 17 (UNC School of Government 2008).

Table 13. Delinquency Adjudications and Dismissals without Adjudications

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> Adjudication of delinquency for offense other than one that would be Class A through E felony if committed by adult 	<ul style="list-style-type: none"> Petitioner must be at least age 18 Petition may not be filed until at least 18 months after petitioner was released from juvenile court jurisdiction 	<ul style="list-style-type: none"> G.S. 7B-3200 AOC-J-903M (Mar. 2002), AOC-J-904M (Mar. 2002) (affidavit), AOC-J-905M (Mar. 2002) (order), AOC-J-906M (Mar. 2002) (notice)

	<ul style="list-style-type: none"> • Good behavior and no subsequent delinquency adjudication or conviction of felony or misdemeanor other than for traffic violation 	
<ul style="list-style-type: none"> • Dismissal of <ul style="list-style-type: none"> ◦ juvenile petition alleging delinquency; or ◦ juvenile petition alleging undisciplined status 	<ul style="list-style-type: none"> • Petitioner has reached: <ul style="list-style-type: none"> ◦ age 16 for expunction of records re dismissed delinquency petition; and ◦ age 18 for expunction of records re dismissed undisciplined petition 	<ul style="list-style-type: none"> • G.S. 7B-3200(h) • AOC-J-909M (Mar. 2002)

Certificates of Relief

This part reviews North Carolina's certificate-of-relief procedure, enacted by the General Assembly in 2011. See [S.L. 2011-265](#) (H 641). The new procedure is patterned after the [Uniform Collateral Consequences of Conviction Act](#) (Uniform Act), enacted in 2009 and amended in 2010 by the Uniform Law Commission (also known as the National Conference of Commissioners on Uniform State Laws). Through the uniform act, the Uniform Law Commission recommended that states allow ex-offenders to apply for relief from collateral consequences that could impede their ability to reintegrate into society. North Carolina's new procedure, in new Article 6 of G.S. Chapter 15A (G.S. 15A-173.1 through 15A-173.6), is effective December 1, 2011, meaning that it is available to ex-offenders who meet the requirements for relief whether their offenses or convictions occurred before or after December 1, 2011.

The basic requirements for obtaining relief, contained in new G.S. 15A-173.2, appear in Table 14. The petitioner may obtain a certificate for up to two Class G, H, or I felony or misdemeanor convictions from one session of court. This language allow a certificate to be obtained for any combination of these convictions up to two convictions (for example, one Class H felony conviction and one misdemeanor).

If granted, a certificate of relief applies to two types of collateral consequences: "collateral sanctions," defined as a penalty, disability, or disqualification imposed by operation of law; and "disqualifications," defined as a penalty that an agency, official, or court may impose based on the conviction. In other words, "collateral sanctions" are those that are mandatory in the absence of a certificate of relief (or other form of relief), while "disqualifications" are those that a board or commission would have the discretion to impose. See *also* Uniform Collateral Consequences of Conviction Act Section 2 Comment (describing collateral sanctions as mandatory and collateral disqualifications as discretionary). A certificate of relief relieves the person of all mandatory "collateral sanctions" except for those listed in new G.S. 15A-173.3 (for example, sex offender registration requirements and firearm disqualifications); those imposed by the North Carolina Constitution or federal law (for example, the state constitutional ban on holding the office of sheriff if previously convicted of a felony and federal bans on federally-assisted housing and food stamp benefits for some convictions); and those specifically excluded in the certificate. A certificate of relief does not bar an entity from

imposing discretionary “disqualifications” based on the conviction, but the entity may consider the certificate favorably in deciding whether to impose the disqualification. A certificate of relief also does not result in an expunction or pardon of the conviction; a person must use other mechanisms, to the extent available, to obtain those forms of relief.

Table 14. Certificates of Relief

Matters Subject to Certificate of Relief	Principal Restrictions on Certificate of Relief	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Any combination of two or fewer Class G, H, or I felony or misdemeanor convictions in one session of court 	<ul style="list-style-type: none"> • No other convictions for a felony or misdemeanor except for a traffic violation • Person is not in violation of any criminal sentence or violation is justified, excused, involuntary, or insubstantial • No pending criminal charges • Person is engaged in or seeking a lawful occupation or activity or otherwise has lawful source of support • Petition may not be filed until twelve months after completion of sentence • Granting of petition would not pose unreasonable risk 	<ul style="list-style-type: none"> • G.S. 15A-173.2 • AOC-CR-273 (Dec. 2011)