

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

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SENATE BILL 562  
PROPOSED COMMITTEE SUBSTITUTE S562-PCS35276-TT-31

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



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

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

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

1 ~~the laws of the United States, this State, or any other state, Upon determining that findings of not~~  
2 ~~guilty or not responsible were entered, the court shall order the expunction.~~

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

8 (a4) Dismissal on or After July 1, 2020. – If any person is charged with a crime, either a  
9 misdemeanor or felony, or an infraction, and the charge is dismissed on or after July 1, 2020, the  
10 dismissed charge is expunged by operation of law. The district attorney who filed the dismissal  
11 or judicial officer who ordered the dismissal shall provide notice of the dismissal to the clerk.

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