

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL 565
PROPOSED COMMITTEE SUBSTITUTE S565-PCS45321-CE-15

Short Title: Removing Barriers to Jobs and Housing.

(Public)

Sponsors:

Referred to:

April 5, 2023

1 A BILL TO BE ENTITLED
2 AN ACT TO IMPROVE THE SECOND CHANCE ACT BY REVISING THE LAWS
3 GOVERNING THE AUTOMATIC EXPUNCTION OF RECORDS AND THE
4 AVAILABILITY OF EXPUNGED RECORDS AND TO ALLOW FOR EXPUNCTION OF
5 THE OFFENSE OF BREAKING OR ENTERING OF A BUILDING WITH INTENT TO
6 COMMIT A FELONY OR LARCENY AND AMEND THE CONDITIONS THAT
7 RESULT IN A PETITION FOR EXPUNCTION BEING DENIED.

8 The General Assembly of North Carolina enacts:

9
10 **PART I. REVISE EXPUNCTION STATUTES**

11 **SECTION 1.(a)** G.S. 15A-146(a4) reads as rewritten:

12 "(a4) Dismissal, Not Guilty, or Not Responsible on or After December 1, 2021. – If any
13 person is charged with a crime, either a misdemeanor or a felony, or is charged with an infraction,
14 the charges in the case are expunged by operation of law no more than 180 days after the date of
15 final disposition if all of the following apply:

16 (1) All charges in the case are disposed on or after December 1, 2021.

17 (2) All charges in the case are dismissed without leave, dismissed by the court, or
18 result in a finding of not guilty or not responsible.

19 Notwithstanding the provisions of this subsection, no case with a felony charge that was
20 dismissed pursuant to a plea agreement will be expunged pursuant to this subsection. ~~Prior to~~
21 ~~December 1, 2021, the~~ The Administrative Office of the Courts shall develop and have in place
22 procedures to automate the expunction of records pursuant to this subsection."

23 **SECTION 1.(b)** G.S. 15A-151 is amended by adding two new subsections to read:

24 "(a1) Court records expunged under this Article are confidential and shall be retained by
25 the clerks of superior court as confidential files. Expunged records retained by the clerks under
26 this subsection shall be retained in accordance with the retention schedule for the underlying case
27 type, as prescribed by the Director of the Administrative Office of the Courts in conjunction with
28 the State Archives pursuant to Chapter 121 of the General Statutes. The Administrative Office
29 of the Courts shall maintain on behalf of the clerks of superior court any expunged records
30 retained in electronic form by the clerks under this subsection.

31 (a2) The Administrative Office of the Courts shall make all confidential records
32 maintained under this section electronically available to the clerks of superior court and to
33 personnel of the clerks' offices designated by the respective clerk. A clerk shall not disclose to
34 any person or for any reason the existence or content of any expunged record from a county other
35 than the clerk's own county. A clerk shall disclose the existence or content of an expunged record
36 from the clerk's own county only as follows:



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- 1 (1) Upon request of a person, or the attorney representing the person on the
 2 expunction matter, requesting disclosure or copies of the person's record.
 3 (2) To the office of the district attorney.
 4 (3) To the Office of the Appellate Defender upon appointment of that office as
 5 counsel for the person who was the subject of the expunged record."

6 **SECTION 1.(c)** G.S. 15A-151.5 reads as rewritten:

7 "**§ 15A-151.5. Prosecutor access to expunged files.**

8 (a) Notwithstanding any other provision of this Article, the Administrative Office of the
 9 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available
 10 to all prosecutors of this State ~~if the criminal record was expunged on or after July 1, 2018, under~~
 11 ~~any of the following:~~ State.

- 12 (1) ~~G.S. 15A-145. Expunction of records for first offenders under the age of 18 at~~
 13 ~~the time of conviction of misdemeanor; expunction of certain other~~
 14 ~~misdemeanors.~~
 15 (2) ~~G.S. 15A-145.1. Expunction of records for first offenders under the age of 18~~
 16 ~~at the time of conviction of certain gang offenses.~~
 17 (3) ~~G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of~~
 18 ~~age at the time of the offense of certain drug offenses.~~
 19 (4) ~~G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of~~
 20 ~~age at the time of the offense of certain toxic vapors offenses.~~
 21 (5) ~~G.S. 15A-145.4. Expunction of records for first offenders who are under 18~~
 22 ~~years of age at the time of the commission of a nonviolent felony.~~
 23 (6) ~~G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age~~
 24 ~~limitation.~~
 25 (7) ~~G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.~~
 26 (7a) ~~G.S. 15A-145.7. Expunction of records for first offenders under 20 years of~~
 27 ~~age at the time of the offense of certain offenses.~~
 28 (7b) ~~G.S. 15A-145.8A. Expunction of records for offenders under the age of 18 at~~
 29 ~~the time of commission of certain misdemeanors and felonies upon~~
 30 ~~completion of the sentence.~~
 31 (7c) ~~G.S. 15A-145.9. Expunction of records of certain offenses committed by~~
 32 ~~human trafficking victims.~~
 33 (8) ~~G.S. 15A-146(a). Expunction of records when charges are dismissed.~~
 34 (9) ~~G.S. 15A-146(a1). Expunction of records when charges are dismissed.~~

35 (b) For any expungement granted on or after July 1, 2018, the record of a criminal
 36 conviction expunged under ~~subdivisions (1) through (7b) of subsection (a) of this section~~ this
 37 Article may be considered a prior conviction and used for any of the following purposes:

- 38 (1) To calculate prior record level and prior conviction level if the named person
 39 is convicted of a subsequent criminal offense.
 40 (2) To serve as a basis for indictment for a habitual offense pursuant to
 41 G.S. 14-7.1 or G.S. 14-7.26.
 42 (3) When a conviction of a prior offense raises the offense level of a subsequent
 43 offense.
 44 (4) To determine eligibility for relief under G.S. 90-96(a).
 45 (5) When permissible in a criminal case under Rule 404(b) or Rule 609 of the
 46 North Carolina Rules of Evidence.

47 "

49 **PART II. EXTENSION OF TEMPORARY AUTOMATIC EXPUNCTION PAUSE**

50 **SECTION 2.(a)** Subsection (b) of Section 1 of S.L. 2022-47 reads as rewritten:

1 "SECTION 1.(b) This section becomes effective August 1, 2022, and expires ~~August~~
2 December 1, 2023."

3 SECTION 2.(b) Subsection (c) of Section 2 of S.L. 2022-47 reads as rewritten:

4 "SECTION 2.(c) When Section 1 of this act expires or is repealed, whichever occurs first,
5 the Administrative Office of the Courts shall, within 180 days, expunge all dismissed charges,
6 not guilty verdicts, and findings of not responsible that occurred during the period of time that
7 Section 1 of this act was in effect and are eligible for automatic expunction pursuant to
8 G.S. 15A-146(a4). Any expungement performed in accordance with this subsection shall be
9 deemed to have occurred five business days after the date that the individual expunction was
10 carried out by the Administrative Office of the Courts."

11 12 PART III. REVISE EXPUNCTION ELIGIBILITY

13 SECTION 3. G.S. 15A-145.5 reads as rewritten:

14 "§ 15A-145.5. **Expunction of certain misdemeanors and felonies; no age limitation.**

15 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent
16 felony" means any misdemeanor or felony except the following:

- 17 (1) A Class A through G felony or a Class A1 misdemeanor.
- 18 (2) An offense that includes assault as an essential element of the offense.
- 19 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the
20 General Statutes, whether or not the person is currently required to register.
- 21 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),
22 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,
23 14-277.3, 14-277.3A, 14-321.1.
- 24 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
25 involves methamphetamines, heroin, or possession with intent to sell or
26 deliver or sell and deliver cocaine.
- 27 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
28 which punishment was determined pursuant to G.S. 14-3(c).
- 29 (7) An offense under G.S. 14-401.16.
- 30 (7a) An offense under ~~G.S. 14-54(a)~~ or G.S. 14-54(a1).
- 31 (8) Any felony offense in which a commercial motor vehicle was used in the
32 commission of the offense.
- 33 (8a) Repealed by Session Laws 2021-118, s. 1, effective December 1, 2021, and
34 applicable to petitions filed on or after that date.
- 35 (9) Any offense that is an attempt to commit an offense described in subdivisions
36 (1) through (8) of this subsection.

37 ...

38 (c) A person may file a petition, in the court of the county where the person was
39 convicted.

- 40 (1) For expunction of one or more nonviolent misdemeanor convictions, the
41 petition shall not be filed earlier than one of the following:
 - 42 a. For expunction of one nonviolent misdemeanor, five years after the
43 date of the conviction or when any active sentence, period of
44 probation, or post-release supervision has been served, whichever
45 occurs later.
 - 46 b. For expunction of more than one nonviolent misdemeanor, seven years
47 after the date of the person's last conviction, other than a traffic offense
48 not listed in the petition for expunction, or seven years after any active
49 sentence, period of probation, or post-release supervision has been
50 served, whichever occurs later.

- 1 (2) For expunction of up to three nonviolent felony convictions, the petition shall
2 not be filed earlier than one of the following:
- 3 a. For expunction of one nonviolent ~~felony~~, felony not subject to the
4 waiting period set forth in sub-subdivision a1. of this subdivision, 10
5 years after the date of the conviction or 10 years after any active
6 sentence, period of probation, or post-release supervision, related to
7 the conviction listed in the petition, has been served, whichever occurs
8 later.
- 9 a1. For expunction of one nonviolent felony under G.S. 14-54(a), 15 years
10 after the date of the conviction or 15 years after any active sentence,
11 period of probation, or post-release supervision, related to the
12 conviction listed in the petition, has been served, whichever occurs
13 later.
- 14 b. For expunction of two or three nonviolent felonies, 20 years after the
15 date of the most recent conviction listed in the petition, or 20 years
16 after any active sentence, period of probation, or post-release
17 supervision, related to a conviction listed in the petition, has been
18 served, whichever occurs later.

19 A person previously granted an expunction under this section is not eligible for relief under
20 this section for any offense committed after the date of the previous order for expunction. Except
21 as provided in subsections (c4) and (c5) of this section, a person previously granted an expunction
22 under this section for one or more misdemeanors is not eligible for expunction of additional
23 misdemeanors under this section and a person previously granted an expunction under this
24 section for one or more felonies is not eligible for expunction of additional felonies under this
25 section.

26 (c1) A petition filed pursuant to this section shall contain, but not be limited to, the
27 following:

- 28 (1) An affidavit by the petitioner that the petitioner is of good moral character and
29 one of the following statements:
- 30 a. If the petition is for the expunction of one or more nonviolent
31 misdemeanors, that the petitioner has not been convicted of any other
32 felony or misdemeanor, other than a traffic violation, under the laws
33 of the United States or the laws of this State or any other state during
34 the applicable ~~five-year or seven-year~~ waiting period set forth in
35 subsection (c) of this section.
- 36 b. If the petition is for the expunction of one or up to three nonviolent
37 felonies, that the petitioner has not been convicted under the laws of
38 the United States or the laws of this State or any other state of any
39 misdemeanor, other than a traffic violation, in the five years preceding
40 the petition, or any felony during the applicable ~~10-year or 20-year~~
41 waiting period set forth in subsection (c) of this section.
- 42 (2) Verified affidavits of two persons who are not related to the petitioner or to
43 each other by blood or marriage, that they know the character and reputation
44 of the petitioner in the community in which the petitioner lives and that the
45 petitioner's character and reputation are good.
- 46 (3) A statement that the petition is a motion in the cause in the case wherein the
47 petitioner was convicted.
- 48 (4) An application on a form approved by the Administrative Office of the Courts
49 requesting and authorizing a name-based State and national criminal history
50 record check by the Department of Public Safety using any information
51 required by the Administrative Office of the Courts to identify the individual,

1 a search by the Department of Public Safety for any outstanding warrants on
2 pending criminal cases, and a search of the confidential record of expunctions
3 maintained by the Administrative Office of the Courts. The application shall
4 be filed with the clerk of superior court. The clerk of superior court shall
5 forward the application to the Department of Public Safety and to the
6 Administrative Office of the Courts, which shall conduct the searches and
7 report their findings to the court.

8 (5) An affidavit by the petitioner that no restitution orders or civil judgments
9 representing amounts ordered for restitution entered against the petitioner are
10 outstanding.

11 (6) An affidavit by the petitioner providing information on any additional
12 petitions the petitioner has submitted, or intends to submit, in other counties
13 pursuant to subsection (c4) of this section seeking expunction of additional
14 convictions.

15 (7) An acknowledgement by the petitioner that, except as provided in subsection
16 (c5) of this section, the expunction of one nonviolent misdemeanor prior to
17 the seven-year waiting period or one nonviolent felony prior to the 20-year
18 waiting period will preclude the petitioner from expunging additional
19 nonviolent misdemeanors or nonviolent felonies that might otherwise be
20 eligible for expunction pursuant to sub-subdivision b. of subdivision (1) of
21 subsection (c) of this section or sub-subdivision b. of subdivision (2) of
22 subsection (c) of this section.

23 Upon filing of the petition, the petition shall be served upon the district attorney of the court
24 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
25 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
26 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
27 additional 30 days to file objection to the petition. The district attorney shall make his or her best
28 efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the
29 date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing
30 on the petition for expunction and the victim's views and concerns shall be considered by the
31 court at such hearing.

32 The presiding judge is authorized to call upon a probation officer for any additional
33 investigation or verification of the petitioner's conduct since the conviction. The court shall
34 review any other information the court deems relevant, including, but not limited to, affidavits
35 or other testimony provided by law enforcement officers, district attorneys, and victims of crimes
36 committed by the petitioner.

37 (c2) The court, after hearing a petition for expunction of one or more nonviolent
38 misdemeanors, shall order that the petitioner be restored, in the contemplation of the law, to the
39 status the petitioner occupied before the arrest or indictment or information, except as provided
40 in G.S. 15A-151.5, if the court finds all of the following:

41 (1) One of the following:

42 a. The petitioner has not previously been granted an expunction under
43 this section for one or more nonviolent misdemeanors.

44 b. Any previous expunction granted to the petitioner under this section
45 for one or more nonviolent misdemeanors was granted pursuant to a
46 petition filed prior to December 1, 2021.

47 (2) The petitioner is of good moral character.

48 (3) The petitioner has no outstanding warrants or pending criminal cases. ~~cases,~~ is
49 not under indictment, and no finding of probable cause exists against the
50 defendant for a felony, in any federal court or state court in the United States.

1 (3a) The petitioner is not free on bond or personal recognizance pending trial,
2 appeal, or sentencing in any federal court or state court in the United States
3 for a crime which would prohibit the person from having his or her petition
4 for expunction under this section granted.

5 (4) The petitioner has no other felony or misdemeanor convictions, other than a
6 traffic violation not listed in the petition for expunction, during the applicable
7 ~~five-year or seven-year~~ waiting period set forth in subsection (c) of this
8 section.

9 (5) The petitioner has no outstanding restitution orders or civil judgments
10 representing amounts ordered for restitution entered against the petitioner.

11 (6) The petitioner has no convictions for a misdemeanor or felony that is listed as
12 an exception to the terms "nonviolent misdemeanor" or "nonviolent felony"
13 as provided in subsection (a) of this section.

14 (7) The petitioner was convicted of an offense or offenses eligible for expunction
15 under this section.

16 (8) The petitioner has completed the applicable ~~five-year or seven-year~~ waiting
17 period set forth in subsection (c) of this section.

18 If the court denies the petition, the order shall include a finding as to the reason for the denial.

19 (c3) The court, after hearing a petition for expunction of one or up to three nonviolent
20 felonies, may order that the petitioner be restored, in the contemplation of the law, to the status
21 the petitioner occupied before the arrest or indictment or information, except as provided in
22 G.S. 15A-151.5, if the court finds all of the following:

23 (1) One of the following:

24 a. The petitioner has not previously been granted an expunction under
25 this section for one or more nonviolent felonies.

26 b. Any previous expunction granted to the petitioner under this section
27 for a felony was granted pursuant to a petition filed prior to December
28 1, 2021.

29 (2) The petitioner is of good moral character.

30 (3) The petitioner has no outstanding warrants or pending criminal cases, is
31 not under indictment, and no finding of probable cause exists against the
32 defendant for a felony, in any federal court or state court in the United States.

33 (3a) The petitioner is not free on bond or personal recognizance pending trial,
34 appeal, or sentencing in any federal court or state court in the United States
35 for a crime which would prohibit the person from having his or her petition
36 for expunction under this section granted.

37 (4) If the petition is for the expunction of one felony, the petitioner has no
38 misdemeanor convictions, other than a traffic violation not listed in the
39 petition for expunction, in the five years preceding the petition, and no other
40 felony convictions during the applicable ~~10-year~~ waiting period set forth in
41 subsection (c) of this section.

42 (4a) If the petition is for the expunction of two or three felonies, or if the petitioner
43 has filed petitions in more than one county pursuant to subsection (c4) of this
44 section, the petitioner has no misdemeanor convictions other than a traffic
45 violation not listed in the petition for expunction in the five years preceding
46 the petition, and no other felony convictions during the applicable ~~20-year~~
47 waiting period set forth in subsection (c) of this section.

48 (4b) If the petition is for the expunction of two or three felonies, if the petitioner
49 has filed petitions in more than one county pursuant to subsection (c4) of this
50 section, or if the petition is filed pursuant to subsection (c5) of this section,
51 the felony offenses were committed within the same 24-month period.

- 1 (5) The petitioner has no outstanding restitution orders or civil judgments
2 representing amounts ordered for restitution entered against the petitioner.
 - 3 (6) The petitioner has no convictions for a misdemeanor that is listed as an
4 exception to the term "nonviolent misdemeanor" as provided in subsection (a)
5 of this section or any other felony offense.
 - 6 (7) The petitioner was convicted of an offense eligible for expunction under this
7 section.
 - 8 (8) The petitioner has completed the applicable ~~10-year or 20-year~~ waiting period
9 set forth in subsection (c) of this section.
- 10 If the court denies the petition, the order shall include a finding as to the reason for the denial.
11 "

12
13 **PART IV. EFFECTIVE DATE**

14 **SECTION 4.** Section 1 of this act becomes effective December 1, 2023. Section 3
15 of this act becomes effective December 1, 2023, and applies to petitions filed on or after that
16 date. The remainder of this act is effective when it becomes law.