



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

## **2015 Expunctions Report**

[DPS, NCAOC and DOJ Joint Report Pursuant to G.S. § 15A-160]

September 1, 2015





## INTRODUCTION

The Department of Public Safety (DPS), in conjunction with the Department of Justice (DOJ) and the North Carolina Administrative Office of the Courts (NCAOC) are required to report annually to the General Assembly on the number and types of expunctions granted and the use of funds appropriated to support the processing of expunctions. Specifically, N.C.G.S. 15A-160, as amended by Section 16B.5(a) of S.L. 2015-241, provides as follows:

### **§ 15A-160. Reporting requirement.**

The Department of Public Safety, in conjunction with the Department of Justice and the Administrative Office of the Courts, shall report jointly to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety Oversight by September 1 of each year regarding expunctions. The report shall include all of the following information:

- (1) The number and types of expunctions granted during the fiscal year in which the report is made.
- (2) The number and type of expunctions granted each fiscal year for the five fiscal years preceding the date of the report.
- (3) A full accounting of how the agencies have spent the receipts generated by the expunction fees received during the fiscal year in which the report is made and for the five preceding fiscal years."

This report represents a joint effort by DPS, DOJ and NCAOC to meet the statutory requirement.

## ANALYSIS

### *A Brief Overview of the Expunction Process*

A person seeking an expunction typically must file a petition for expunction under the relevant statute. As custodian of the record, the clerk receives petitions for filing, collects any necessary fees, schedules the petitions for hearing when required, and then files and carries out any order entered by the court.

Certain expunction provisions require a criminal record check and a search by the NCAOC of the confidential index of prior expunctions prior to a hearing on the petition. When a petition must be sent to the State Bureau of Investigation ("SBI") and NCAOC for such searches, a judge initiates the process by signing a request for the record searches. After a judge has signed the request, the petition is sent first to the SBI for the criminal record check, and the SBI then sends the petition to NCAOC for a search of the confidential index of prior expunctions.

Almost all expunctions require a hearing before the court. For expunction petitions sent to the SBI and NCAOC for record checks, the clerk does not schedule the hearing until the petition has been returned by the NCAOC and the petitioner requests a hearing. For expunctions that do not require record checks, the clerk schedules the hearing upon filing of the petition and collection of any required fees.

When a petition for expunction is granted, the clerk must expunge all record of the case from the court's records, including both paper and electronic records. This requires NCAOC to delete all images stored electronically and on microfilm, both in the court databases and at State Archives. The clerk also must notify State and local agencies of the expunction by certified copy of the order, and provide a certified copy of the order to the NCAOC.



### Number and Type of Expunctions

For FY 2014-15, North Carolina state courts issued 7,972 expunction orders. The attached Table 1 details the number of expunctions for FY 2014-15 and the preceding five fiscal years, categorized by the statute under which the expunction was granted.

### Receipts Generated from Expunction Fees

Section 18B.16 of S.L 2013-360 amended the expunction statutes (G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, and 15A-146) to impose a \$175.00 fee on persons who file a petition for expunction of a criminal record on or after September 1, 2013.<sup>1</sup> The \$175.00 fee is deposited in the General Fund, with \$122.50 of the fee remitted to DPS for the costs of criminal record checks performed in connection with processing petitions for expunctions and \$52.50 retained by NCAOC to pay the costs of processing petitions for expunctions. The section authorized DOJ to use up to \$1.4 million to create and support up to five new staff positions to help process petitions for expunction and conduct criminal record checks required for those petitions. After the SBI was transferred to DPS, the DOJ distribution was transferred to DPS as well.

From July 1, 2014 through June 30, 2015, NCAOC collected and disbursed a total of \$443,410 from expunction fees applied toward the General Fund. Of that amount, NCAOC retained \$133,070, remitted \$46,109 to DOJ and \$259,108 to DPS, and remitted \$5,123 to the General Fund pursuant to G.S. 7A-321(d).

Of the funds remitted to DPS during the 2014-15 fiscal year, DPS spent or disbursed \$104,130.26 on expunction payroll and administrative support expenses, leaving an unobligated cash balance of \$282,968 as of June 30, 2015. DPS filled two of the five authorized staff positions during FY 2013-14, and has initiated the process of filling the remaining three staff positions now that monthly recurring receipt levels appear to support the hiring of additional full time staff.

Of the funds remitted to NCAOC during FY 2014-15, NCAOC spent \$53,926 on expunction payroll and administrative support expenses. Pursuant to G.S. 143C-1-2(b), the remaining balance of \$78,198 reverted back to the General Fund as of June 30, 2015.

### **SUMMARY**

NCAOC, the SBI and DPS will continue to take appropriate steps to expedite the processing of expunctions. Both NCAOC and DPS anticipate maximizing the use of future funds to expedite the processing of expunctions.

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<sup>1</sup> G.S. 15A-146 imposes the fee only for offenses dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge.



**Table 1: Expunction Orders for Fiscal Years 2009-2015**

Statute	2009-10	2010-11	2011-12	2012-13	2013-14	2014-15	Total
7B-3200	0	1	3	0	2	2	8
15A-145	140	97	6	17	8	7	275
15A-145(A)	3	77	144	146	175	128	673
15A-145(D1)	3	14	15	16	7	0	55
15A-145.1	0	0	1	1	1	0	3
15A-145.2	0	0	0	0	8	4	12
15A-145.2(A)	1	23	23	34	47	33	161
15A-145.2(B)	8	7	13	14	22	11	75
15A-145.2(C)	5	32	26	30	42	22	157
15A-145.3	0	0	0	0	1	2	3
15A-145.3(A)	0	0	0	0	3	1	4
15A-145.3(B)	0	7	6	7	4	5	29
15A-145.3(C)	0	1	1	0	1	2	5
15A-145.4	0	0	4	15	21	13	53
15A-145.5	0	0	0	6	311	292	609
15A-145.6	0	0	0	0	0	1	1
15A-146	11,480	11,414	8,990	10,006	12,886	7,407	62,183
15A-147	4	52	69	66	60	42	293
15A-149	0	0	0	0	2	0	2
90-96(B)	10	2	0	1	1	0	14
90-96(D)	9	0	0	0	1	0	10
90-96(E)	12	2	0	0	0	0	14
90-113.14(E)	2	0	0	0	0	0	2
<b>Total</b>	<b>11,677</b>	<b>11,729</b>	<b>9,301</b>	<b>10,359</b>	<b>13,603</b>	<b>7,972</b>	<b>64,641</b>

NOTE: Session Law 2009-577 consolidated all criminal expunction statutes under Article 5 of Chapter 15A by recodifying expunction provisions from other chapters of the General Statutes, including Chapter 90. The expunction counts included in this table under Chapter 90 provisions predate that change or perhaps misstate the applicable statutory section.