



2021 EXPUNCTIONS REPORT

G.S. 15A-160

PREPARED BY
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS
SEPTEMBER 1, 2021



About the North Carolina Judicial Branch

The mission of the North Carolina Judicial Branch is to protect and preserve the rights and liberties of all the people as guaranteed by the Constitutions and laws of the United States and North Carolina by providing a fair, independent and accessible forum for the just, timely and economical resolution of their legal affairs.

About the North Carolina Administrative Office of the Courts

The mission of the North Carolina Administrative Office of the Courts is to provide services to help North Carolina's unified court system operate more efficiently and effectively, taking into account each courthouse's diverse needs, caseloads, and available resources.

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, 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 and NCAOC to meet the statutory requirement.

ANALYSIS

Overview of the Expunction Process

A person seeking an expunction 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 both a criminal record check by DPS, which is performed by the State Bureau of Investigation ("SBI"), and an NCAOC search of the confidential index of prior expunctions prior to a hearing on the petition. The petitioner requests and authorizes the search as part of the petition for expunction filed in those cases. After a judge has signed the request, the clerk's office forwards the petition to DPS for the criminal record check and to NCAOC for a search of the confidential index of prior expunctions.

Almost all expunctions require a court hearing. For expunction petitions sent to DPS and NCAOC for record checks, the clerk does not schedule the hearing until the petition has been returned by 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 petitioner and the NCAOC.



Number and Type of Expunctions

For FY 2020-2021, North Carolina state courts issued 16,390 expunction orders. Table 1 below details the number of expunctions for FY 2020-2021 and the preceding four fiscal years, categorized by the statute under which the expunction was granted.

Table 1: Expunction Orders for Fiscal Years 2016-17 through 2020-2021

Statute	2016-17	2017-18	2018-19	2019-20	2020-21	Total
15A-145	2	4	0	0	2	8
15A-145(A)	209	177	137	73	50	646
15A-145(D1)	0	0	0	0	0	0
15A-145.1	0	0	1	0	0	1
15A-145.2	3	3	5	4	0	15
15A-145.2(A)	57	36	47	32	32	204
15A-145.2(B)	77	59	64	29	24	253
15A-145.2(C)	54	52	40	27	42	215
15A-145.3	2	1	1	0	0	4
15A-145.3(A)	0	0	1	0	0	1
15A-145.3(B)	45	33	30	13	11	132
15A-145.3(C)	1	4	2	0	0	7
15A-145.4	17	27	25	19	9	97
15A-145.5	500	629	1,057	802	1,022	4,010
15A-145.6	3	0	4	3	0	10
15A-145.7	0	0	1	0	1	2
15A-145.8(A)	0	0	0	0	24	24
15A-145.8(B)	0	0	0	0	1	1
15A-145.8A	0	0	0	0	234	234
15A-145.9	0	0	0	0	2	2
15A-146	10,457	9,755	49	10	94	20,365
15A-146(A/A1)	0	726	12,236	10,598	13,194	36,754
15A-146(A2)	0	35	537	449	542	1,563
15A-147	1,010	833	2	0	1	1,846
15A-147(A)	0	8	18	11	16	53
15A-147(A1)	0	369	1,288	1,450	1,087	4,194



15A-148	0	0	0	0	1	1
15A-149	1	0	0	0	1	2
Total	12,438	12,751	15,545	13,520	16,390	70,644

Receipts Generated from Expunction Fees

Section 18B.16 of S.L 2013-360 amended certain 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, 2013.¹ S.L. 2020-35 further amended expunction statutes to impose a \$175.00 fee on persons who file a petition for expunction of a criminal record pursuant to G.S. 15A-145.8A. 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 session law authorized the use of up to \$1.4 million to create and support up to five new SBI staff positions to help process petitions for expunction and conduct criminal record checks required for those petitions.

From July 1, 2020 through June 30, 2021, NCAOC collected and disbursed a total of \$759,656.50 from expunction fees applied toward the General Fund. Of that amount, NCAOC retained \$227,848.50 and remitted \$531,808 to DPS pursuant to G.S. 7A-321(d).²

Of the funds remitted to DPS during FY 2020-21, the SBI spent \$482,505.64 on expunction payroll and operational expenses and reverted \$44,985.06 to the General Fund. The remitted funds support receipt-supported positions in the SBI.

Of the funds remitted to NCAOC during FY 2020-2021, NCAOC spent \$167,264 on expunction payroll and administrative support expenses. Pursuant to G.S. 143C-1-2(b), the remaining balance of \$182,659 is expected to be approved as a legislative carryforward for FY 2021-2022.³

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.

¹ 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.

² The SBI shows receipts of \$527,490.70, resulting in a variance of \$4,317.30. The variance between NCAOC disbursements and the SBI receipts is due to the posting of some receipts after the end of the 2020-21 fiscal year.

³ NCAOC had an approved carryforward of \$124,874 from FY 2019-20.



North Carolina Administrative Office of the Courts

P.O. Box 2448

Raleigh, NC 27607

<http://www.nccourts.gov/>

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