

**2011-2012**

**CRIMINAL RECORDS  
EXPUNCTION  
COMMITTEE**

**MINUTES**

**LRC COMMITTEE ON CRIMINAL RECORD EXPUNCTIONS**  
**MEMBERSHIP LIST**  
**2011-12**

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Leg. Office: 715-3029

## LRC COMMITTEE ON CRIMINAL RECORD EXPUNCTIONS

[illegible]

## **Criminal Record Expunctions**

The Legislative Research Commission may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Legislative Research Commission finds that it may be possible to achieve a better balance between these interests, then the Legislative Research Commission may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers, but also affords some appropriate relief to persons with a relatively minor past criminal conviction. In its study, the Commission may consider all of the following:

- (1) The effect of a person's criminal record with regard to a person's ability to obtain employment.
- (2) The reasons that an employer may need to know about a potential employee's criminal record.
- (3) What types of criminal records may or may not be relevant with regard to 24 certain types of employment.
- (4) What criminal offenses, if any, it may be reasonable to allow to be expunged from a person's record, the time period or other criteria that should be used to determine whether it is appropriate to allow the expunction, and whether the offense should be completely erased from the criminal record so that the person has no criminal record, or retained but limit the accessibility of the record only for certain purposes.
- (5) Any other issues the Commission considers relevant to this topic.

### **Committee Membership**

| <b>Senate Members</b> |  | <b>House Members</b>   |        |
|-----------------------|--|------------------------|--------|
|                       |  | Rep. Leo Daughtry      | Chair  |
|                       |  | Rep. John Blust        | Member |
|                       |  | Rep. Rick Glazier      | Member |
|                       |  | Rep. Tim Moore         | Member |
|                       |  | Rep. Shirley Randleman | Member |
|                       |  | Rep. Tim Spear         | Member |
|                       |  | Rep. Sarah Stevens     | Member |

## 2011-2012 LRC Committee on Criminal Record Expunctions Budget Estimate

|  |                   |  |
|--|-------------------|--|
| <b>1) Legislative Members Subsistence</b>  |                   | <b>\$4,992.00</b>  |
|  | \$104.00          | Legislative Subsistence  |
| X  | 8                 | Number of Legislative members                                    |
| X  | 1.5               | Half of Members using Two Days of Subsistence                    |
| X  | 4                 | Number of Meetings   |
| =  | <u>\$4,992.00</u> | Total Legislative Members Subsistence                            |
| <b>2) Non-Legislative Members Subsistence</b>  |                   | <b>\$0.00</b>  |
|  | \$116.00 *        | Non-Legislative Members Subsistence                              |
| X  | 0                 | Number of Non-Legislative Members                                |
| X  | 1.5               | Half of Non-Legislative Members using Two Days Subsistence       |
| X  | 0                 | Number of Meetings   |
| =  | <u>\$0.00</u>     | Total Non-Legislative Members Subsistence                        |
| * \$101.05 Daily Per Diem Rate Plus \$15 Committee Per Diem Rate (GS138-5)           |                   |  |
| <b>3) Travel Expenses</b>  |                   | <b>\$1,960.00</b>  |
| <b>a) Legislative Members</b>  |                   |  |
|  | \$70.00           | Round Trip Reimbursement (Based on 242 miles @ \$0.29 per mile*) |
| X  | 8                 | Number of Legislative Members                                    |
| X  | 4                 | Number of Meetings   |
| =  | <u>\$1,960.00</u> | Total Travel for Legislative Members                             |
| <b>b) Non-Legislative Member</b>   |                   |  |
|  | \$73.00           | Round Trip Reimbursement (Based on 242 miles @ \$0.30 per mile*) |
| X  | 0                 | Number of Non-Legislative Members                                |
| X  | 0                 | Number of Meetings   |
| =  | <u>\$0.00</u>     | Total Travel for Non-Legislative Members                         |
| * 242 Miles is an Average per Member based on the Total Certified Round Trip Mileage |                   |  |
| <b>4) Clerical Staff</b>   |                   | <b>\$0.00</b>  |
|  | \$818.00 *        | Average Salary with Benefits for 5 day work week                 |
| X  | 0                 | Number of Meetings   |
| =  | <u>\$0.00</u>     | Total Clerical Staff   |
| * Average Weekly Wages for LA, CAI, CAII & CAIII with Fringes Added.                 |                   |  |
| <b>5) Professional Staff</b>   |                   | <b>\$0.00</b>  |
| <b>6) Special Travel and Expenses</b>  |                   | <b>\$0.00</b>  |
| <b>7) Postage and Telephone Expenses</b>   |                   | <b>\$50.00</b>   |
| <b>8) Supplies</b>   |                   | <b>\$0.00</b>  |
| <b>9) Copying and Printing</b>   |                   | <b>\$50.00</b>   |
| <b>10) Reserve</b>   |                   | <b>\$0.00</b>  |
| <b>Total</b>   |                   | <b>\$7,052.00</b>  |

Updated 09/01/2011

## MINUTES

LRC COMMITTEE ON CRIMINAL RECORD EXPUNCTIONS  
ROOM 1228, LEGISLATIVE BUILDING  
THURSDAY, NOVEMBER 17, 2011  
11:00 am

The LRC Committee on Criminal Record Expunctions met in Room 1228 of the Legislative Building on November 17, 2011 at 11:00 am. Members present were Representative Leo Daughtry, Chair and Representatives John Blust, Rick Glazier, Tim Moore and Shirley Randleman.

Legislative Services staff present were Hal Pell and Brenda Carter from the Research Division and Emily Johnson from the Bill Drafting Division. The Visitor Registration Sheet is attached (Attachment I).

Chairman Daughtry called the meeting to order at 11:00 am. He welcomed the members and visitors. He presented the proposed Committee Budget, which Representative Randleman moved to adopt and which was adopted (Attachment II).

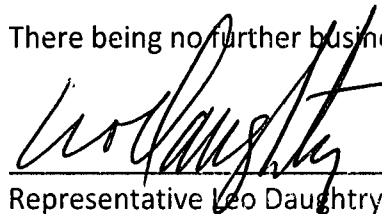
Chairman Daughtry reviewed the Committee's Charge (Attachment III). He then called on Leanne Winner with the NC School Boards Association, who presented and discussed issues of specific concern to the Association (Attachment IV).


Brenda Carter presented a chart and memo summarizing current NC law related to the expunction of criminal records (Attachments V and V(a)).

Hal Pell presented and explained Senate Bill 397 and House Bill 641 (Attachment VI).

Chairman Daughtry welcomed questions and comments from the committee and from interested parties. Chairman Daughtry stated that the committee will form a working group (headed by Hal Pell) of interested parties to further study the issue of criminal record expunctions and report back to the full committee at the next committee meeting, planned for the middle of January 2012.

There being no further business, the Chair adjourned the meeting at 11:58 am.

  
Representative Leo Daughtry, Chair

  
Margaret Dockery, Committee Assistant



## **LRC COMMITTEE ON CRIMINAL RECORD EXPUNCTIONS**

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### **AGENDA**

Thursday, November 17, 2011  
Room 1228/1327, Legislative Building  
11:00 AM

### **WELCOME AND INTRODUCTION**

Rep. Leo Daughtry, Chair

- **LRC Charge to the Committee -- Staff**
- **Adoption of Committee Budget**
- **Existing Expunction Laws – Staff**
- **Comments by Interested Parties**

### **Committee Discussion**

### **Instructions to Staff**

# Attachment I

## VISITOR REGISTRATION SHEET

LRC Committee on Criminal Record Expunctions

November 17, 2011

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

Conni Wilson

ECNC

Andrew Cagle

NC Sheriffs' Assn.

Elizabeth Robinson

NCRMA

Lee TOLBERT

NCAJ

W. McLawrence

NCICU

Ruth Mackle

NCGA

Loanne Winnie

NCSBA

CHARLENE MOODY

NCREC

JEAN SAUNDERS

STJAP

Susan Taylor

NCCADV

Kerry Sutton

NCAJ



## VISITOR REGISTRATION SHEET

LRC Committee on Criminal Record Expunctions

November 17, 2011

Name of Committee

Date

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME

FIRM OR AGENCY AND ADDRESS

|                  |                                  |
|------------------|----------------------------------|
| Fred Baggett     | Police Chiefs Assn               |
| Sarah Preston    | ACLU - NC                        |
| Haley Phillips   | NCDOT                            |
| Daniel Buiwies   | NC Justice Center                |
| Bill Rowe        | NC Justice Center                |
| Janice           | WRAL                             |
| Mildred Spearman | NCAOC                            |
| Troy AGE         | NCAOC                            |
| Kimberly Dorton  | Conference of District Attorneys |
| Peg Dorer        | Conference of DAs                |
| Aaron Brown      | Sen. Don Vaughan's Office        |

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| <b>5) Professional Staff</b>   |  | <b>\$0.00</b>     |
| <b>6) Special Travel and Expenses</b>  |  | <b>\$0.00</b>     |
| <b>7) Postage and Telephone Expenses</b>   |  | <b>\$50.00</b>    |
| <b>8) Supplies</b>   |  | <b>\$0.00</b>     |
| <b>9) Coping and Printing</b>  |  | <b>\$50.00</b>    |
| <b>10) Reserve</b>   |  | <b>\$0.00</b>     |
| <b>Total</b>   |  | <b>\$7,052.00</b> |

Updated 09/01/2011

**Criminal Record Expunctions**

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|-----------------------|--|------------------------|--------|
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|                       |  | Rep. John Blust        | Member |
|                       |  | Rep. Rick Glazier      | Member |
|                       |  | Rep. Tim Moore         | Member |
|                       |  | Rep. Shirley Randleman | Member |
|                       |  | Rep. Tim Spear         | Member |
|                       |  | Rep. Sarah Stevens     | Member |
|                       |  | Rep. David Guice       | Member |

## H and I Crimes of Specific Concern to N. C. School Boards Association

### *I Offenses*

GS 90-95(b)(2) manufacture, deliver or possess with intent to manufacture, sell or deliver, a Schedule III-VI Controlled Substance

GS 14-269.2(c) Aid minor to possess firearm on educational property or to a curricular or extracurricular activity sponsored by a school

G.S. 14-269.2(b) Possess firearm on educational property or to a curricular or extracurricular activity sponsored by a school

G.S. 14.269 Carrying a concealed weapon (second or subsequent offenses)

G.S. 14-202(g) Secretly peeping into room occupied by another person (possess a photographic image obtained in violation of 14-202)

G.S. 14-202(f) Secretly peeping into room occupied by another person (secretly or surreptitiously use or install a device to create a photographic image)

G.S. 14-202(e) Secretly peeping into room occupied by another person (using a device to create a photographic image underneath or through clothing)

G.S. 14-202(d) Secretly peeping into room occupied by another person (using a device to create a photographic image)

G.S. 14-190.6 Employing or permitting minor to assist in obscenity offense (*Note: Some bills have explicitly not allowed this offense to be expunged*)

### *H Offenses*

G.S. 90-95(d1)(1)b Possess or distribute an immediate precursor chemical knowing it will be used to manufacture a controlled substance

G.S. 90-95(d1)(1) Possess an immediate precursor chemical with intent to manufacture a controlled substance

G.S. 90-95(b) (2) Sale of a Scheduled III-VI Controlled Substance

G.S. 50B-4.1(g) Violation of valid protective order (with 2 prior convictions under Chapter 50B)



G.S. 14-3(c) Class 1 misdemeanor offense committed because of the victim's race, color, religion, nationality, or country of origin

## EXPUNCTION OF CRIMINAL RECORDS IN NORTH CAROLINA

| CITATION   | ELIGIBLE OFFENSES   | WAITING PERIOD | STIPULATIONS  |
|--|---|----------------|---|
| G.S. 15A-146<br><br>Charges Dismissed or there is a finding of Not Guilty                              | Misdemeanor or felony.<br><br>Infraction under G.S. 18B-302(i) [purchase or possession of malt beverages or unfortified wine, or consumption of any alcoholic beverage, by a person 19 or 20 years old] prior to December 1, 1999.  | None           | Charges dismissed or finding of not guilty for offense.<br><br>Not applicable if person has had previous expungement* of any kind or has a felony conviction.<br><br>*Unless the previous expungement was prior to October 1, 2005 and was for an offense that occurred within the same 12-month period or was dismissed in the same term of court as the offense(s) for which the current expungement is sought. |
| G.S. 15A-147<br><br>Charges Dismissed or there is a finding of Not Guilty, as Result of Identity Theft | Infraction, misdemeanor or felony   | None           | Charges brought as result of identity theft and charges dismissed, finding of not guilty, or conviction is set aside.<br><br>No costs taxed against petitioner.   |
| G.S. 15A-145.2(b)<br>G.S. 15A-145.3(b)<br><br>Charges Dismissed Certain Drug Offenses/Toxic Vapors Act | Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br><br>Felony possession of less than 1 gram of cocaine.*<br>*Effective 12-1-11, includes felony possession of any controlled substance. (HB 642, Session Law 2011-192) | None           | Charges dismissed or finding of not guilty.<br><br>Person must be 21 or under at time of offense.   |

| CITATION   | ELIGIBLE OFFENSES  | WAITING PERIOD  | STIPULATIONS   |
|--|--|---|--|
| G.S. 15A-149<br>Pardon of Innocence  | Any offense  | None  | Petitioner has received pardon of innocence from the Governor  |
| G.S. 7B-3200(h)<br>Juvenile Records<br>Alleged Delinquent/Undisciplined            | Any allegation of juvenile delinquency.<br>Any allegation of undisciplined juvenile.<br>Any adjudication of undisciplined.   | Petitioner is 16 years or older.<br>Petitioner is 18 years or older.<br>Petitioner is 18 years or older.  | Delinquency alleged, but juvenile petition dismissed.<br>Undisciplined alleged, but juvenile petition dismissed.   |
| G.S. 7B-3200(a),(b)<br>Juvenile Records<br>Adjudicated<br>Delinquent/Undisciplined | Any adjudication of delinquency for a misdemeanor or Class F-I felony.   | For delinquency, at least 18 months after release from juvenile court jurisdiction.   | Petitioner has had no subsequent delinquent adjudications or convictions of a misdemeanor or felony as an adult.   |
| G.S. 15A-145<br>First Offender Under 18<br>(Age 21 for certain alcohol offenses)   | Misdemeanor  | Whichever of the following is later:<br>• 2 years after the date of conviction;<br>• Completion of any period of probation,   | No other convictions.<br>Petitioner must have been:<br>• Under 18 at the time of the offense; or<br>• If offense is misdemeanor possession of alcohol in violation of G.S. 18B-302(b)(1), petitioner must have been under 21 at the time of the offense. |
| G.S. 15A-145.1 and G.S. 14-50.29<br>Certain Gang Offenses                          | Class H felony under Street Gang Suppression Act<br>Enhanced offense under G.S. 14-50.22 (enhances any criminal offense by one class if done as part of gang activity) | After discharge and dismissal (conditional discharge)<br>For convictions, whichever of the following is later:<br>• 2 years after the date of conviction;<br>• Completion of any period of probation. | Petitioner must have been under 18 at the time of the offense.<br>Petitioner has no prior misdemeanor or felony convictions.   |

| CITATION  | ELIGIBLE OFFENSES   | WAITING PERIOD   | STIPULATIONS  |
|---|---|--|---|
| G.S. 14-458.1(c)<br><b>Cyberbullying</b>  | Cyberbullying by person under the age of 18 years.  | Upon discharge and dismissal.  | Petitioner must have been under 18 at the time of the offense.  |
| G.S. 15A-145.2(a)<br>G.S. 15A-145.3(a)<br><b>First-time drug offenders</b><br>(Discharge & Dismissal) | Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br><br>Felony possession of less than 1 gram of cocaine.*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i> | Upon discharge and dismissal under G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). | Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior discharge and dismissal under this statute. |
| G.S. 15A-145.2(c)<br>G.S. 15A-145.3(c)<br><b>First-time drug offenders</b><br>(Convicted)             | Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia<br><br>Felony possession of less than 1 gram of cocaine.*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i>  | No sooner than 12 months after conviction.   | Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior expunctions under this statute.             |
| G.S. 15A-145(d1)<br><b>Misdemeanor Larceny</b>  | Misdemeanor larceny pursuant to G.S. 14-72(a); value of goods \$1,000 or less.  | 15 years from date of conviction.  | Petitioner must have no felony convictions and must have had no misdemeanor convictions in the 15 years prior to petition for expunction.                 |



| CITATION   | ELIGIBLE OFFENSES  | WAITING PERIOD                            | STIPULATIONS  |
|--|--|---|---|
| <p>G.S. 15A-145.4<br/> <i>(as enacted in Senate Bill 397,<br/> Session Law 2011-278 and<br/> effective December 1, 2011)</i></p> <p><b>Nonviolent Felony</b></p> | <p>Class H or Class I felony that does not include assault as an essential element of the offense, does not require the offender to register as a sex offender, or is otherwise specifically excluded.</p> | <p>Four years from date of conviction</p> | <p>Petitioner must have been under 18 at the time of the offense.</p> <p>Petitioner must possess a high school diploma, graduation equivalency certificate, or a GED; and must have completed at least 100 hours of community service since the conviction.</p> |



# NORTH CAROLINA GENERAL ASSEMBLY

## Legislative Services Office

George R. Hall, Legislative Services Officer

### Research Division

300 N. Salisbury Street, Suite 545  
Raleigh, NC 27603-5925  
Tel. 919-733-2578 Fax 919-715-5460

O. Walker Reagan  
Director

**TO:** Members of the LRC Committee on Criminal Record Expunctions  
**FROM:** Brenda Carter and Susan Sitze, Committee Co-Counsel  
**RE:** Summary of North Carolina Law Concerning the Expunction of Criminal Records

In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction and a person may generally be granted only one expungement in his or her lifetime. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. This memorandum contains a brief overview of the circumstances under which expunction is authorized in this State.

### Expunction When Charges Dismissed/Not Guilty

- **Charges Dismissed Or Person Found Not Guilty** - G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. *Persons who have previously received an expungement under this or other specified provisions, or persons who have previously been convicted of a felony would not qualify under this provision.*
- **Charges Dismissed Or Person Found Not Guilty As A Result Of Identity Fraud** - G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged. *There is no limit to the number of times a person who is the victim of identity fraud can qualify for an expungement under this provision.*
- **Charges Dismissed Or Person Found Not Guilty Of Certain Drug-Related Offenses Committed While Not Over The Age Of 21** - G.S. 15A-145.2(b) provides for the expunction of records when a person is charged with misdemeanor possession of a controlled substance or possession of less than 1 gram of cocaine\*, and the charges are subsequently dismissed or there is a finding of not guilty. *An order of expunction must be entered if the court determines that the person was not over 21 at the time of the offense for which the person was charged.* A similar provision is contained in G.S. 15A-145.3(b) with regard to misdemeanor violations of the Toxic Vapors Act and possession of drug paraphernalia. *\*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*
- **Pardon of Innocence** - G.S. 15A-149 provides for the expunction of records when a person has been granted a pardon of innocence by the Governor.

**Expunction When the Offender Was Under a Specified Age at the Time of the Offense**

- **Juvenile Records** - G.S. 7B-3200 provides for a person to petition for the expunction of records relating to the person's having been adjudicated delinquent or undisciplined while a minor. *This provision does not allow the expunction of records relating to an offense that would have been a Class A-E felony if committed by an adult.* The statute also provides for expunction of juvenile records when a juvenile petition was dismissed without adjudication.
- **Convictions of Misdemeanor Committed While under the Age of 18** - G.S. 15A-145 provides for the expunction of records for first offenders convicted of a misdemeanor committed while under the age of 18. *A person who is convicted of a misdemeanor committed prior to reaching the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions within that time period.*
- **Misdemeanor Possession of Alcohol Committed While under the Age of 21** - G.S. 15A-145 also provides for the expunction of records for first offenders convicted of misdemeanor possession of alcohol who were under the age of 21 at the time the offense was committed. *A person who is convicted of misdemeanor possession of alcohol committed while under the age of 21 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Misdemeanor Cyberbullying Committed While under the Age of 18** - G.S. 14-458.1(c) provides for the conditional discharge and dismissal of a misdemeanor cyberbullying offense committed while under the age of 18 and provides that expunction may be obtained pursuant to G.S. 15A-146. *(See Charges Dismissed or Person Found Not Guilty above)*
- **Certain Gang Offenses Committed While under the Age of 18** - G.S. 15A-145.1 provides for the expunction of records for first offenders who are either: (i) convicted of, or (ii) discharged and dismissed, for certain gang offenses, when the offense was committed while the offender was under the age of 18. *A person who is convicted of, or discharged and dismissed for, one of these offenses committed while under the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Nonviolent Felonies Committed While under the Age of 18** - *(Effective December 1, 2011)* G.S. 15A-145.4 (as enacted in Senate Bill 397, Session Law 2011-278) provides for the expunction of records for first offenders who are convicted of a Class H or Class I felony committed while the offender was under the age of 18. The provision does not apply to any felony that includes assault as an essential element of the offense, or to any offense that requires the person to register as a sex offender or that is otherwise specifically excluded. *A person who is convicted of an eligible felony offense committed while under the age of 18 may have that conviction expunged after 4 years, provided the person has completed any active sentence, period of probation, and post-release supervision, and there have been no other convictions in that time period. A petitioner seeking expunction under this provision must possess a high school diploma, a high school graduation equivalency certificate, or a GED, and must have completed at least 100 hours of community service since the conviction.*

- ***Conditional Discharge and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(a) and G.S. 15A-145.3(a) authorize the expunction of records for offenses discharged and dismissed pursuant to G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). These conditional discharges and dismissals are for first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. When such person pleads guilty to or is found guilty of misdemeanor drug possession, possession of less than one gram of cocaine\*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the offender on probation under certain conditions. *Discharge and dismissal under this provision may occur only once with respect to any person.*  
\*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.
- ***Cancellation and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(c) and G.S. 15A-145.3(c) apply to first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. No sooner than 12 months after conviction, the person may apply to the court to have a conviction of misdemeanor drug possession, possession of less than one gram of cocaine\*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, cancelled and records of that conviction expunged. *Cancellation and expunction under this provision may occur only once with respect to any person.*  
\*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.

**Expunction of Larceny Conviction after 15 Years Have Elapsed From Date of Conviction**

- ***Misdemeanor Larceny*** – G.S. 15A-145(d1) provides for the expunction of a misdemeanor conviction of misdemeanor larceny pursuant to G.S. 14-72(a) if the person has no felony convictions, it has been at least 15 years since the conviction for misdemeanor larceny, and the person has had no felony or misdemeanor convictions during that 15 year period.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2011-278  
SENATE BILL 397

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES BUT TO ALLOW THE CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION ACCESS TO THE RECORDS OF EXPUNCTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

- (1) A Class A through G felony.
- (2) A felony that includes assault as an essential element of the offense.
- (3) A felony that is an offense for which the convicted offender must register under Article 27A of Chapter 14 of the General Statutes.
- (4) A felony that is an offense that did not require registration under Article 27A of Chapter 14 of the General Statutes at the time of the commission of the offense but does require registration on the date the petition to expunge the offense would be filed.
- (5) A felony charged for any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.6, 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3A, 14-321.1.
- (6) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (7) A felony offense charged pursuant to G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense charged as a felony pursuant to G.S. 14-3(c).
- (8) A felony offense charged pursuant to G.S. 14-401.16.
- (9) A felony offense in which a commercial motor vehicle was used in the commission of the offense.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been charged and arrested for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions shall be expunged from the person's record in accordance with this section.

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall 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. The person shall also perform



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at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

- (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Justice for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
- (6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.
- (7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

The petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

(d) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a nonviolent felony under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the four-year period since the date of conviction of the nonviolent felony in question.
- (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile records remain separate from adult records and files and are withheld from public inspection as provided under Article 30 of Chapter 7B of the General Statutes.
- (3) Review the amount of restitution made by the petitioner to the victim of the nonviolent felony to be expunged and give consideration to whether or not restitution was paid in full.
- (4) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of nonviolent felonies committed by the petitioner.

(e) The court may order that the person be restored, in the contemplation of the law, to the status the person occupied before the arrest or indictment or information if the court finds all of the following after a hearing:

- (1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, for four years from the date of conviction of the nonviolent felony in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.
- (2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (5) The petitioner was less than 18 years old at the time of the commission of the offense in question.
- (6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.
- (7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

(f) No person as to whom an order has been entered pursuant to subsection (e) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(g) The court shall also order that the nonviolent felony conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section."

**SECTION 2.** G.S. 15A-151(a) reads as rewritten:

**"§ 15A-151. Confidential agency files; exceptions to expunction.**

(a) The Administrative Office of the Courts shall maintain a confidential file containing the names of those people for whom it received a notice under G.S. 15A-150. The information contained in the file may be disclosed only as follows:

- (1) To a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.
- (2) To a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152.
- (3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.
- (4) If the criminal record was expunged pursuant to G.S. 15A-145.4, to State and local law enforcement agencies for employment purposes only.

- (5) If the criminal record was expunged pursuant to G.S. 15A-145.4, to the North Carolina Criminal Justice Education and Training Standards Commission for certification purposes only.
- (6) If the criminal record was expunged pursuant to G.S. 15A-145.4, to the North Carolina Sheriffs' Education and Training Standards Commission for certification purposes only."

SECTION 3. G.S. 17C-13 reads as rewritten:

"§ 17C-13. ~~Pardons.~~Pardons; expunctions.

(a) When a person presents competent evidence that he has been granted an unconditional pardon for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for an alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-145.4, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 4. G.S. 17E-12 reads as rewritten:

"§ 17E-12. ~~Pardons.~~Pardons; expunctions.

(a) When a person presents competent evidence that the person has been granted an unconditional pardon of innocence for a crime in this State, any other state, or the United States, the Commission may not deny, suspend, or revoke that person's certification based solely on the commission of that crime or for alleged lack of good moral character due to the commission of that crime.

(b) Notwithstanding G.S. 15A-145.4, the Commission may gain access to a person's felony conviction records, including those maintained by the Administrative Office of the Courts in its confidential files containing the names of persons granted expunctions. The Commission may deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged."

SECTION 5. This act becomes effective December 1, 2011.

In the General Assembly read three times and ratified this the 17<sup>th</sup> day of June, 2011.

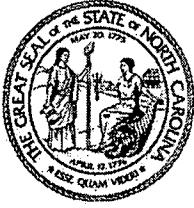
s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 5:20 p.m. this 23<sup>rd</sup> day of June, 2011





## Session Law 2011-278 (SB 397): Expunge Nonviolent Offense by Minor

2011-2012 General Assembly

|                       |                                    |                     |                   |
|-----------------------|------------------------------------|---------------------|-------------------|
| <b>Committee:</b>     | LRC on Criminal Record Expunctions | <b>Date:</b>        | November 16, 2011 |
| <b>Introduced by:</b> | Sens. D. Berger, McKissick, Daniel | <b>Prepared by:</b> | Hal Pell          |
| <b>Analysis of:</b>   | S.L. 2011-278                      |                     | Committee Counsel |

**SUMMARY:** *Session Law 201--278 allows for the expunction of the criminal records of a nonviolent felony, for a first offender under the age of 18 at the time the offense was committed. The petitioner is required to perform at least 100 hours of community service before filing a petition for expunction. To qualify for expunction, the person must also have obtained a high school diploma, high school graduation equivalency certificate, or a GED. This act becomes effective December 1, 2011.*

**CURRENT LAW:** Expunction is a judicial process for removing records pertaining to a criminal case. The purpose of expunction is to clear the public record of entries so that a person who is entitled to expunction may omit reference to the charges to potential employers and others, and so that a records check for prior arrests and convictions will not disclose the expunged entries. In North Carolina, expunction is limited to specifically defined situations, and a person can generally be granted only one expunction in his or her lifetime. Each expunction statute specifically prescribes who may apply for expunction and the conditions under which the court can order expunction.

Laws pertaining to the expunction of criminal records are set out in Article 5 of Chapter 15A of the General Statutes. There is currently no general provision for the expunction of felony convictions. However, there are limited provisions that allow for the expunction of felonies in the following circumstances:

- Juvenile records involving adjudication of delinquency for Class F or lower felony offenses, if the person has no subsequent convictions as an adult.
- Felony possession of less than 1 gram of cocaine, if the person was not over 21 at the time of the offense. As of December 1, 2011, this will be expanded to first time felony possession of any controlled substance.
- Felony offenses where the person has received a pardon of innocence from the Governor.
- A Class H felony or an enhanced offense (Class I) under the Street Gang Suppression Act.

### BILL ANALYSIS:

**Section 1** provides for the expunction of the criminal records of a nonviolent felony, for a first offender who was under the age of 18 at the time the offense was committed.

- The law requires that a person eligible for expunction under the provisions of the bill be notified about the expunction provisions by the probation officer. If no probation officer is assigned to the person, the court must provide notification of the expunction provisions to the offender at the time of conviction.
- The bill would not allow the expunction of Class A through G felonies; felony assaults; sex offenses that require registration; specific sex-related and stalking offenses; certain drug offenses involving methamphetamines, heroin, or cocaine; ethnic intimidation; contamination of food or drink to incapacitate the victim; or use of a commercial vehicle to commit a felony.

# Senate Bill 397

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- The petition for expunction may be filed not earlier than 4 years after the date of the conviction, or when the term of imprisonment, probation and post-release supervision has been served, whichever occurs later. Before filing a petition for expunction the person would be required to perform at least 100 hours of community service, preferably related to the conviction. The petition must contain affidavits by the petitioner that:
  - (1) The petitioner has been off good moral character since the date of conviction and has not been convicted of any other felony or any non-traffic misdemeanor,
  - (2) No restitution orders or civil judgments representing amounts order for restitution entered against the petitioner are outstanding,
  - (3) The petitioner has performed at least 100 hours of community service since the conviction, with a list of recipients of the services, and a detailed description of the services,
  - (4) The petitioner possesses a high school diploma, high school graduation equivalency certificate, or a GED
- The act includes provisions governing the procedure for filing and judicial review of the petition, and to whom the record may be disclosed.

**Section 2** authorizes the Administrative Office of the Courts to disclose information pertaining to expunctions under the provisions of this bill to State and local law enforcement agencies for employment purposes, and to the Criminal Justice Education and Training Standards Commission and the Sheriff's Education and Training Standards Commission for certification purposes.

**Sections 3 and 4** of the bill would allow the Criminal Justice Education and Training Standards Commission and the Sheriff's Education and Training Standards Commission to gain access to a person's felony conviction records, and the Commissions would be authorized to deny, suspend, or revoke a person's certification based solely on that person's felony conviction, whether or not that conviction was expunged.

**EFFECTIVE DATE:** The law becomes effective December 1, 2011.

*Brenda Carter, Staff Attorney, substantially contributed to this summary.*

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GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

SESSION LAW 2011-265  
HOUSE BILL 641

AN ACT TO ESTABLISH A CERTIFICATE OF RELIEF THAT WILL ASSIST INDIVIDUALS CONVICTED OF LESS SERIOUS CRIMES IN DEALING WITH COLLATERAL SANCTIONS AND DISQUALIFICATIONS THAT RESULT FROM A CRIMINAL CONVICTION AND A PROCEDURE FOR ISSUING THAT CERTIFICATE.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 15A of the General Statutes is amended by adding a new Article to read:

"Article 6.  
"Certificate of Relief.

**"§ 15A-173.1. Definitions.**

The following definitions apply in this Article:

- (1) Collateral consequence. – A collateral sanction or a disqualification.
- (2) Collateral sanction. – A penalty, disability, or disadvantage, however denominated, imposed on an individual as a result of the individual's conviction of an offense which applies by operation of law, whether or not the penalty, disability, or disadvantage is included in the judgment or sentence. The term does not include imprisonment, probation, parole, post-release supervision, forfeiture, restitution, fine, assessment, or costs of prosecution.
- (3) District attorney. – The office of the district attorney that prosecuted the offense giving rise to the collateral consequence from which relief is sought.
- (4) Disqualification. – A penalty, disability, or disadvantage, however denominated, that an administrative agency, governmental official, or court in a civil proceeding may impose on an individual on grounds relating to the individual's conviction of an offense.

**"§ 15A-173.2. Certificate of Relief.**

(a) An individual who is convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation, may petition the court where the individual was convicted for a Certificate of Relief relieving collateral consequences as permitted by this Article. Except as otherwise provided in this subsection, the petition shall be heard by the senior resident superior court judge if the convictions were in superior court, or the chief district court judge if the convictions were in district court. The senior resident superior court judge and chief district court judge in each district may delegate their authority to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that district.

(b) Except as otherwise provided in G.S. 15A-173.3, the court may issue a Certificate of Relief if, after reviewing the petition, the individual's criminal history, any information provided by a victim under G.S. 15A-173.6 or the district attorney, and any other relevant evidence, it finds the individual has established by a preponderance of the evidence all of the following:

- (1) Twelve months have passed since the individual has completed his or her sentence. For purposes of this subdivision, an individual has not completed his or her sentence until the individual has served all of the active time, if any, imposed for each offense and has also completed any period of



probation, post-release supervision, and parole related to the offense that is required by State law or court order.

- (2) The individual is engaged in, or seeking to engage in, a lawful occupation or activity, including employment, training, education, or rehabilitative programs, or the individual otherwise has a lawful source of support.
- (3) The individual has complied with all requirements of the individual's sentence, including any terms of probation, that may include substance abuse treatment, anger management, and educational requirements.
- (4) The individual is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
- (5) A criminal charge is not pending against the individual.
- (6) Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

(c) The Certificate of Relief shall specify any restriction imposed and collateral sanction or disqualification from which relief has not been granted under G.S. 15A-173.4(a).

(d) A Certificate of Relief relieves all collateral sanctions, except those listed in G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law, and any others specifically excluded in the certificate. A Certificate of Relief does not automatically relieve a disqualification; however, an administrative agency, governmental official, or court in a civil proceeding may consider a Certificate of Relief favorably in determining whether a conviction should result in disqualification.

(e) A Certificate of Relief issued under this Article does not result in the expunction of any criminal history record information, nor does it constitute a pardon.

(f) A Certificate of Relief may be revoked pursuant to G.S. 15A-173.4(b) if the individual is subsequently convicted of a felony or misdemeanor other than a traffic violation or is found to have made any material misrepresentation in his or her petition.

(g) The denial of a petition for a Certificate of Relief shall state the reasons for the denial, and the petitioner may file a subsequent petition 12 months from the denial and shall demonstrate that the petitioner has remedied the defects in the previous petition and has complied with any conditions for reapplication set by the court pursuant to G.S. 15A-173.4(a) in order to have the petition granted.

**"§ 15A-173.3. Collateral sanctions not subject to order of limited relief or Certificate of Relief.**

A Certificate of Relief shall not be issued to relieve any of the following collateral sanctions:

- (1) Requirements imposed by, and any statutory requirements or prohibitions imposed as a result of registration pursuant to, Article 27A of Chapter 14 of the General Statutes.
- (2) Prohibitions on possession of firearms imposed by Articles 54A and 54B of Chapter 14 of the General Statutes.
- (3) A motor vehicle license suspension, revocation, limitation, or ineligibility imposed pursuant to Chapter 20 of the General Statutes.
- (4) Ineligibility for certification pursuant to Chapter 17C or 17E of the General Statutes.
- (5) Ineligibility for employment as any of the following if the ineligibility is a sanction imposed by a statute or session law of North Carolina.
  - a. A corrections or probation officer.
  - b. A prosecutor or investigator in either the Department of Justice or in the office of a district attorney. For purposes of this subdivision, the term district attorney shall include any district attorney authorized pursuant to G.S. 7A-60.

**"§ 15A-173.4. Issuance, modification, and revocation of Certificate of Relief.**

(a) When a petition is filed under G.S. 15A-173.2, including a petition for enlargement of an existing Certificate of Relief, the court shall notify the district attorney at least three weeks before the hearing on the matter. The court may issue a Certificate of Relief subject to restriction, condition, or additional requirement. When issuing, denying, modifying, or revoking a Certificate of Relief, the court may impose conditions for reapplication.

(b) The court may modify or revoke a Certificate of Relief it issued if it finds just cause by a preponderance of the evidence. Just cause includes subsequent conviction of a felony or

misdemeanor other than a traffic violation in this State, or of an offense in another jurisdiction that is deemed a felony or misdemeanor other than a traffic violation in this State, or material misrepresentation by the petitioner in the petition for Certificate of Relief. A motion for modification or revocation of a Certificate of Relief may be initiated by the court on its own motion, or upon motion of the district attorney. The individual for whom the Certificate of Relief has been issued, and the district attorney, shall be given notice of the motion at least three weeks before any hearing on the matter. A hearing on the motion shall be held if requested by either the individual for whom the Certificate of Relief has been issued, or the district attorney.

(c) The district attorney shall have the right to appear and be heard at any proceeding relating to the issuance, modification, or revocation of the Certificate of Relief.

(d) The court is authorized to call upon a probation officer for any additional investigation or verification of the individual's conduct it reasonably believes necessary to its decision to issue, modify, or revoke a Certificate of Relief. If there are material disputed issues of fact or law, the individual and the district attorney may submit evidence and be heard on those issues.

(e) The issuance, modification, and revocation of Certificates of Relief shall be a public record.

**"§ 15A-173.5. Reliance on order or Certificate of Relief as evidence of due care.**

In a judicial or administrative proceeding alleging negligence, a Certificate of Relief is a bar to any action alleging lack of due care in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the individual to whom the Certificate of Relief was issued, if the person against whom the judicial or administrative proceeding is brought knew of the Certificate of Relief at the time of the alleged negligence.

**"§ 15A-173.6. Victim's rights.**

The victim of the underlying offense for which a Certificate of Relief is sought may appear and be heard, or may file a statement for consideration by the court, in a proceeding for issuance, modification, or revocation of the Certificate of Relief. Notification to the victim shall be made through the Victim Witness Coordinator in the office of the district attorney."

**SECTION 2.** This act becomes effective December 1, 2011.

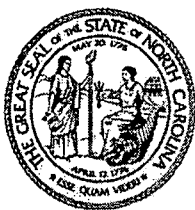
In the General Assembly read three times and ratified this the 16<sup>th</sup> day of June, 2011.

s/ Walter H. Dalton  
President of the Senate

s/ Thom Tillis  
Speaker of the House of Representatives

s/ Beverly E. Perdue  
Governor

Approved 4:54 p.m. this 23<sup>rd</sup> day of June, 2011



## Session Law 2011-265 (HB 641): Certificate of Relief Act

2011-2012 General Assembly

|                       |                                    |                     |                   |
|-----------------------|------------------------------------|---------------------|-------------------|
| <b>Committee:</b>     | LRC on Criminal Record Expunctions | <b>Date:</b>        | November 16, 2011 |
| <b>Introduced by:</b> | Reps. Guice, Floyd                 | <b>Prepared by:</b> | Hal Pell          |
| <b>Analysis of:</b>   | S.L. 2011-265                      |                     | Committee Counsel |

**SUMMARY:** *This act establishes a Certificate of Relief that will assist individuals convicted of less serious crimes in dealing with collateral sanctions and disqualifications that result from a criminal conviction and a procedure for issuing that certificate. This act becomes effective December 1, 2011.*

### BILL ANALYSIS:

A person who is convicted of no more than 2 Class G, H, or I felonies, or misdemeanors in one session of court, and who has no other convictions for a felony or misdemeanor other than a traffic violation would be eligible to petition for a Certificate of Relief.

The court has the discretion to issue the Certificate of Relief if it finds all of the following by a preponderance of the evidence:

- 12 months have passed since the person completed their sentence.
- The person is engaged in, or seeking to engage in, a lawful occupation or activity.
- The person has complied with all requirements of their sentence.
- The person is not in violation of the terms of any criminal sentence, or that any failure to comply is justified, excused, involuntary, or insubstantial.
- A criminal charge is not pending against the person.
- Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.

The Certificate of Relief relieves all collateral sanctions (those specifically provided by law), except:

- Requirements imposed by, and any statutory requirements or prohibitions imposed as a result of registration as a sex offender.
- Prohibitions on possession of firearms.
- Motor vehicle license suspension, revocation, limitation or ineligibility.
- Ineligibility for certification as a law enforcement officer.
- Ineligibility for employment as a corrections or probation officer, or as a prosecutor or investigator in a district attorney's office.

The Certificate of Relief does not automatically relieve disqualifications (where the law allows a sanction, but does not require it), but a Certificate of Relief may be considered favorably in determining whether a conviction should result in disqualification.

Certificates of Relief may be issued with restrictions and may specifically state sanctions or disqualifications from which relief has not been granted. A Certificate of Relief does not result in expunction or pardon of offenses. A Certificate of Relief may be revoked or modified upon motion of

# House Bill 641

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the court or the district attorney. The district attorney and the victim may appear and be heard at any hearing related to the issuance, modification or revocation of a Certificate of Relief.

Reliance on a Certificate of Relief in hiring, retaining, licensing, leasing to, admitting to a school or program, or otherwise transacting business or engaging in activity with the person for whom the Certificate of Relief was issued, is a bar in a judicial or administrative proceeding alleging negligence, if the person against whom the proceeding is brought knew of the Certificate of Relief at the time of the alleged negligence.

**EFFECTIVE DATE:** This act becomes effective December 1, 2011.

*Susan Sitze, Staff Attorney, substantially contributed to this summary.*

*H641-SMRK-145(sl) v1*

## MINUTES

### LRC COMMITTEE ON CRIMINAL RECORD EXPUNCTIONS

ROOM 1228, LEGISLATIVE BUILDING

WEDNESDAY, APRIL 18, 2012

11:00 am

The LRC Committee on Criminal Record Expunctions met in Room 1228 of the Legislative Building on April 18, 2012 at 11:00 am. Members present were Representative Leo Daughtry, Chair and Representatives John Blust, Rick Glazier, Shirley Randleman, Tim Spear and Sarah Stevens.

Legislative Services staff present were Susan Sitze from the Research Division and Emily Johnson from the Bill Drafting Division. The Visitor Registration Sheet is attached (Attachment I).

Chairman Daughtry called the meeting to order at 11:00 am. He welcomed the members and visitors. Rep. Stevens moved to approve the Minutes from the November 17, 2011 meeting. The motion passed (Attachment II).

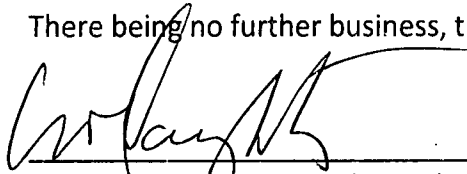
Chairman Daughtry presented the draft report of the Legislative Research Commission's Committee on Criminal Record Expunctions (Attachment III) and asked Sitze to explain the draft report.

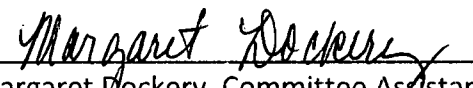
Chairman Daughtry welcomed questions and comments from the committee and from interested parties. Daniel Bowes from the NC Justice Center submitted his written remarks (Attachment IV).

Rep. Randleman brought forward three amendments and moved for approval. The motion passed (Attachments V, VI and VII).

Rep. Glazier brought forward one amendment and moved for approval. The motion passed (Attachment VIII).

There being no further business, the Chair adjourned the meeting at 12:10 pm.

  
Representative Leo Daughtry, Chair

  
Margaret Dockery, Committee Assistant

attachments





**Legislative Research Commission  
Committee on Criminal Record Expunctions**

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**AGENDA**

April 18, 2012  
Room 1228 Legislative Building  
11:00 AM

**WELCOME AND INTRODUCTION**

Rep. Leo Daughtry, Chair

- **Approval of Minutes from November 17, 2011 meeting**
- **Discussion and adoption of draft committee report**
- **Adjourn**

## VISITOR REGISTRATION SHEET

LRC Committee on Criminal Record Expunctions

April 18, 2012

Name of Committee

Date

VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK

NAME

FIRM OR AGENCY AND ADDRESS

|                |                                |
|----------------|--------------------------------|
| W. M. Howell   | UCCU                           |
| Carl Dean      | OSP                            |
| Sarah Preston  | ACLU-NC                        |
| Andrew Cagle   | NC Sheriffs' Assoc.            |
| Eddie Caldwell | NC Sheriffs' Assn.             |
| Troy Price     | NC Admin. Office of the Courts |
| L. A. Russell  | CJPC                           |
| Matt Farrell   | NC SBA                         |
| Peep Jones     | NC CD                          |
| Trinity Quater | NC Conf of DA's                |
| Daniel Bowes   | NC Justice Center              |

# VISITOR REGISTRATION SHEET

## LRC Committee on Criminal Record Expunctions

April 18, 2012

Name of Committee

Date \_\_\_\_\_

**VISITORS: PLEASE SIGN IN BELOW AND RETURN TO COMMITTEE CLERK**

NAME \_\_\_\_\_

## FIRM OR AGENCY AND ADDRESS

Elizabeth Hanson

11/2/2014

Mary Jennings

Acids

## MINUTES

LRC COMMITTEE ON CRIMINAL RECORD EXPUNCTIONS  
ROOM 1228, LEGISLATIVE BUILDING  
THURSDAY, NOVEMBER 17, 2011  
11:00 am

The LRC Committee on Criminal Record Expunctions met in Room 1228 of the Legislative Building on November 17, 2011 at 11:00 am. Members present were Representative Leo Daughtry, Chair and Representatives John Blust, Rick Glazier, Tim Moore and Shirley Randleman.

Legislative Services staff present were Hal Pell and Brenda Carter from the Research Division and Emily Johnson from the Bill Drafting Division. The Visitor Registration Sheet is attached (Attachment I).

Chairman Daughtry called the meeting to order at 11:00 am. He welcomed the members and visitors. He presented the proposed Committee Budget, which Representative Randleman moved to adopt and which was adopted (Attachment II).

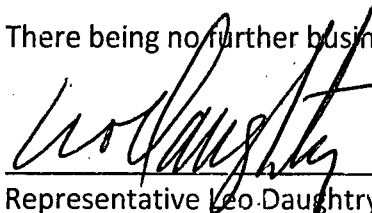
Chairman Daughtry reviewed the Committee's Charge (Attachment III). He then called on Leanne Winner with the NC School Boards Association, who presented and discussed issues of specific concern to the Association (Attachment IV).

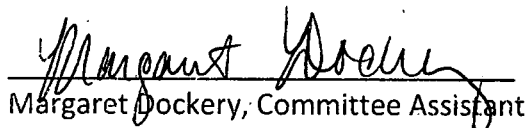
Brenda Carter presented a chart and memo summarizing current NC law related to the expunction of criminal records (Attachments V and V(a)).

Hal Pell presented and explained Senate Bill 397 and House Bill 641 (Attachment VI).

Chairman Daughtry welcomed questions and comments from the committee and from interested parties. Chairman Daughtry stated that the committee will form a working group (headed by Hal Pell) of interested parties to further study the issue of criminal record expunctions and report back to the full committee at the next committee meeting, planned for the middle of January 2012.

There being no further business, the Chair adjourned the meeting at 11:58 am.

  
Representative Leo Daughtry, Chair

  
Margaret Dockery, Committee Assistant

NORTH CAROLINA GENERAL ASSEMBLY

LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

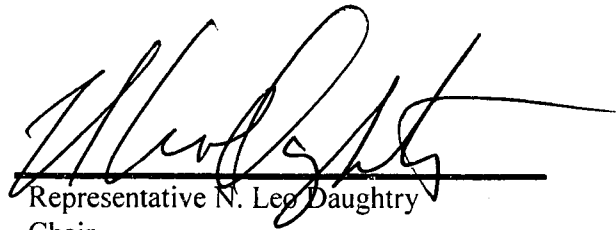
RALEIGH, NC 27601



April 18, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Criminal Record Expunctions, pursuant to G.S. 120-30.17(1).

  
Representative N. Lee Daughtry  
Chair

Committee on Criminal Record Expunctions  
Legislative Research Commission

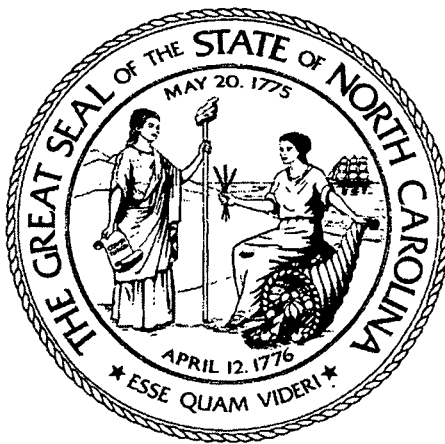
11/11/2011 10:10:10 AM

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LEGISLATIVE RESEARCH COMMISSION

**CRIMINAL RECORD EXPUNCTIONS  
COMMITTEE**

**NORTH CAROLINA GENERAL ASSEMBLY**



**REPORT TO THE  
2012 SESSION  
of the  
2011 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

APRIL, 2012

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## TRANSMITTAL LETTER

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TO THE MEMBERS OF THE 2012 REGULAR SESSION  
OF THE 2011 GENERAL ASSEMBLY

**The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Criminal Record Expunctions, pursuant to G.S. 120-30.70(1).**

Respectfully submitted,

---

Senator Philip E. Berger  
President Pro Tempore of the Senate

---

Representative Thomas R. Tillis  
Speaker of the House of Representatives

Co-Chairs  
Legislative Research Commission

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## LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

**President Pro Tempore of the Senate**

Senator Philip E. Berger  
Co-Chair

Senator Thomas M. Apodaca  
Acting Co-Chair

Senator Peter S. Brunstetter  
Senator Linda D. Garrou  
Senator Martin L. Nesbitt, Jr.  
Senator Richard Y. Stevens

**Speaker of the House of Representatives**

Representative Thomas R. Tillis  
Co-Chair

Representative Timothy K. Moore  
Acting Co-Chair

Representative John M. Blust  
Representative Justin P. Burr  
Representative Mike D. Hager  
Representative Edith D. Warren

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## PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Criminal Record Expunctions, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative N. Leo Daughtry. The full membership of the Committee is listed under Committee Membership. A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

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## COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Criminal Record Expunctions met two times after the 2011 Regular Session. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

### November 17, 2011 Meeting

The initial meeting of the LRC Committee on Criminal Record Expunctions began with a review of the Committee's charge and the adoption of an operating budget for the Committee. Committee staff provided an overview of North Carolina laws pertaining to the expunction of criminal records. (See Appendix E)

Committee members engaged in an open discussion of issues and concerns for consideration during the course of the Committee's deliberations. The Committee provided interested parties an opportunity to be heard on the issue.

### April 18, 2012

The Committee met to finalize and adopt its final report containing its findings and recommendations to the Legislative Research Commission.

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## FINDINGS AND RECOMMENDATIONS

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### Findings

The Committee makes the following findings regarding the expunction of criminal records:

1. In general, expunction is allowed in limited circumstances to remove information about a charge or conviction of a criminal offense from the records of certain classes of people. Once the record is expunged, any information related to the offense is permanently deleted from the record and the individual may deny the incident ever occurred.
2. In North Carolina, individuals who are eligible for expunction include:
  - Those who had charges brought against them, but those charges were ultimately dismissed or the person was found not guilty.
  - Those who received a pardon of innocence from the Governor of North Carolina.
  - Those who were the victim of identity theft (i.e. the person arrested for the crime provided another person's name and information to the police instead of their own).
  - Those 18 years of age or older wishing to expunge juvenile records of minor offenses.
  - First-time offenders 21 years old or younger charged with a minor alcohol offense or drug possession crime.
3. Information about a person's criminal record can be accessed by potential employers, landlords and others running criminal background checks. Consequently, many people are increasingly aware of the effect a criminal conviction can have on their lives and how it can impact everything from their ability to get a job or rent an apartment, to their ability to gain credit or to retain a professional license.
4. Expunction is a process that can and should be used to give people who have committed minor crimes a clean slate and a fresh start, especially when a significant amount of time has passed without further trouble.

### Recommendation

The Committee recommends that the General Assembly enact Legislative Proposal I:

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

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## COMMITTEE MEMBERSHIP

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2011-2012

**Speaker of the House of Representatives Appointments:**

Representative N. Leo Daughtry, Chair

Representative John Blust

Representative Richard Glazier

Representative Timothy Moore

Representative Shirley Randleman

Representative Timothy Spear

Representative Sarah Stevens

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## COMMITTEE CHARGE

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The Legislative Research Commission's Committee on Criminal Record Expunctions may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Committee finds that it may be possible to achieve a better balance between these interests, then the Committee may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers, but also affords some appropriate relief to persons with a relatively minor past criminal conviction. In its study, the Committee may consider all of the following:

- (1) The effect of a person's criminal record with regard to a person's ability to obtain employment.
- (2) The reasons that an employer may need to know about a potential employee's criminal record.
- (3) What types of criminal records may or may not be relevant with regard to certain types of employment.
- (4) What criminal offenses, if any, it may be reasonable to allow to be expunged from a person's record, the time period or other criteria that should be used to determine whether it is appropriate to allow the expunction, and whether the offense should be completely erased from the criminal record so that the person has no criminal record, or retained but limit the accessibility of the record only for certain purposes.
- (5) Any other issues the Committee considers relevant to this topic.

Authority: LRC 2011 HJR 760



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## STATUTORY AUTHORITY

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### NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

#### **Legislative Research Commission.**

##### **§ 120-30.17. Powers and duties.**

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

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## LEGISLATIVE PROPOSAL I

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1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR  
3 NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO  
4 HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR  
5 MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS  
6 OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** Chapter 15A of the General Statutes is amended to add a  
9 new section to read:

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  
12 "nonviolent 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  
16 14 of the General Statutes, whether or not the person is currently  
17 required to register.
- 18 (4) Any of the following sex-related or stalking offenses:  
19 G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A,  
20 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- 21 (5) Any felony offense in Chapter 90 of the General Statutes where the  
22 offense involves methamphetamines, heroin, or possession with intent  
23 to sell or deliver or sell and deliver cocaine.
- 24 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any  
25 offense for which punishment was determined pursuant to  
26 G.S. 14-3(c).
- 27 (7) An offense under G.S. 14-401.16.
- 28 (8) Any felony offense in which a commercial motor vehicle was used in  
29 the commission of the offense.

30 (b) Notwithstanding any other provision of law, if the person is convicted of more  
31 than one nonviolent felony or nonviolent misdemeanor in the same session of court and  
32 none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred  
33 after the person had already been served with criminal process for the commission of a  
34 nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or  
35 misdemeanor convictions shall be treated as one nonviolent felony or misdemeanor  
36 conviction under this section, and the expunction order issued under this section shall  
37 provide that the multiple nonviolent felony convictions or misdemeanor convictions shall  
38 be expunged from the person's record in accordance with this section.

39 (c) A person may file a petition in the court where the person was convicted for  
40 expunction of a nonviolent misdemeanor or nonviolent felony conviction from the  
41 person's criminal record if the person has no other misdemeanor or felony convictions,

1 other than a traffic violation, and was convicted of a nonviolent misdemeanor or  
2 nonviolent felony that is eligible pursuant to subsection (b) of this section. The petition  
3 shall not be filed earlier than 15 years after the date of the conviction or when any active  
4 sentence, period of probation, and post-release supervision has been served, whichever  
5 occurs later. The petition shall contain, but not be limited to, the following:

- 6 (1) An affidavit by the petitioner that the petitioner has been of good  
7 behavior since the completion of any sentence received for the  
8 nonviolent misdemeanor or nonviolent felony, and has not been  
9 convicted of any other felony or misdemeanor other than a traffic  
10 violation under the laws of the United States or the laws of this State  
11 or any other state.
- 12 (2) Verified affidavits of two persons who are not related to the petitioner  
13 or to each other by blood or marriage, that they know the character and  
14 reputation of the petitioner in the community in which the petitioner  
15 lives and that the petitioner's character and reputation are good.
- 16 (3) A statement that the petition is a motion in the cause in the case  
17 wherein the petitioner was convicted.
- 18 (4) An application on a form approved by the Administrative Office of the  
19 Courts requesting and authorizing a name-based State and national  
20 criminal record check by the Department of Justice using any  
21 information required by the Administrative Office of the Courts to  
22 identify the individual and a search of the confidential record of  
23 expunctions maintained by the Administrative Office of the Courts.  
24 The application shall be forwarded to the Department of Justice and to  
25 the Administrative Office of the Courts, which shall conduct the  
26 searches and report their findings to the court.
- 27 (5) An affidavit by the petitioner that no restitution orders or civil  
28 judgments representing amounts ordered for restitution entered against  
29 the petitioner are outstanding.

30 The petition shall be served upon the district attorney of the court wherein the case  
31 was tried resulting in conviction. The district attorney shall have 10 days thereafter in  
32 which to file any objection thereto and shall be duly notified as to the date of the hearing  
33 of the petition.

34 The judge to whom the petition is presented is authorized to call upon a probation  
35 officer for any additional investigation or verification of the petitioner's conduct since the  
36 completion of any sentence received for the nonviolent misdemeanor or nonviolent  
37 felony.

38 If the court, after hearing, finds that the petitioner has no other felony or misdemeanor  
39 convictions, other than a traffic violation, the petitioner has no outstanding restitution  
40 orders or civil judgments representing amounts ordered for restitution entered against the  
41 petitioner, and the petitioner was convicted of an offense eligible for expunction under  
42 this section and was convicted of, and completed any sentence received for, the  
43 nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the  
44 petition, it shall order that such person be restored, in the contemplation of the law, to the  
45 status the person occupied before such arrest or indictment or information.

(d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the certifying Commission regardless of whether or not the convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

(e) The court shall also order that the conviction be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent."

**SECTION 2. G.S. 15A-145.4 reads as rewritten:**

**"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

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

- (1) A Class A through G felony.
- (2) A felony that includes assault as an essential element of the offense.
- (3) A felony that is an offense ~~for which the convicted offender must register under requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes.~~ Statutes, whether or not the person is currently required to register.
- ~~(4) A felony that is an offense that did not require registration under Article 27A of Chapter 14 of the General Statutes at the time of the commission of the offense but does require registration on the date the petition to expunge the offense would be filed.~~
- (5)(4) A felony charged for any of Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.6, 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.

- 1 (6)(5) Any felony offense ~~charged pursuant to~~ Chapter 90 of the General  
2 Statutes where the offense involves methamphetamines, heroin, or  
3 possession with intent to sell or deliver or sell and deliver cocaine.
- 4 (7)(6) A felony offense ~~charged pursuant to~~ G.S. 14-12.12(b), 14-12.13,  
5 or 14-12.14, or any felony offense charged as a felony for which  
6 punishment was determined pursuant to G.S. 14-3(c).
- 7 (8)(7) A felony offense ~~charged pursuant to~~ G.S. 14-401.16.
- 8 (9)(8) ~~A~~ Any felony offense in which a commercial motor vehicle was used  
9 in the commission of the offense.
- 10 (b) Notwithstanding any other provision of law, if the person is convicted of more  
11 than one nonviolent felony in the same session of court and none of the nonviolent  
12 felonies are alleged to have occurred after the person had already been ~~charged and~~  
13 ~~arrested~~ served with criminal process for the commission of a nonviolent felony, then the  
14 multiple nonviolent felony convictions shall be treated as one nonviolent felony  
15 conviction under this section, and the expunction order issued under this section shall  
16 provide that the multiple nonviolent felony convictions shall be expunged from the  
17 person's record in accordance with this section.
- 18 (c) Whenever any person who had not yet attained the age of 18 years at the time  
19 of the commission of the offense and has not previously been convicted of any felony or  
20 misdemeanor other than a traffic violation under the laws of the United States or the laws  
21 of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the  
22 person may file a petition in the court where the person was convicted for expunction of  
23 the nonviolent felony from the person's criminal record. The petition shall not be filed  
24 earlier than four years after the date of the conviction or when any active sentence, period  
25 of probation, and post-release supervision has been served, whichever occurs later. The  
26 person shall also perform at least 100 hours of community service, preferably related to  
27 the conviction, before filing a petition for expunction under this section. The petition  
28 shall contain the following:
- 29 (1) An affidavit by the petitioner that the petitioner has been of good  
30 moral character since the date of conviction of the nonviolent felony in  
31 question and has not been convicted of any other felony or any  
32 misdemeanor other than a traffic violation under the laws of the United  
33 States or the laws of this State or any other state.
- 34 (2) Verified affidavits of two persons who are not related to the petitioner  
35 or to each other by blood or marriage, that they know the character and  
36 reputation of the petitioner in the community in which the petitioner  
37 lives and that the petitioner's character and reputation are good.
- 38 (3) A statement that the petition is a motion in the cause in the case  
39 wherein the petitioner was convicted.
- 40 (4) An application on a form approved by the Administrative Office of the  
41 Courts requesting and authorizing (i) a State and national criminal  
42 history record check by the Department of Justice using any  
43 information required by the Administrative Office of the Courts to  
44 identify the individual; (ii) a search by the Department of Justice for  
45 any outstanding warrants or pending criminal cases; and (iii) a search  
46 of the confidential record of expunctions maintained by the

1 Administrative Office of the Courts. The application shall be  
2 forwarded to the Department of Justice and to the Administrative  
3 Office of the Courts, which shall conduct the searches and report their  
4 findings to the court.

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

8 (6) An affidavit by the petitioner that the petitioner has performed at least  
9 100 hours of community service since the conviction for the  
10 nonviolent felony. The affidavit shall include a list of the community  
11 services performed, a list of the recipients of the services, and a  
12 detailed description of those services.

13 (7) An affidavit by the petitioner that the petitioner possesses a high  
14 school diploma, a high school graduation equivalency certificate, or a  
15 General Education Development degree.

16 The petition shall be served upon the district attorney of the court wherein the case  
17 was tried resulting in conviction. The district attorney shall have 30 days thereafter in  
18 which to file any objection thereto and shall be duly notified as to the date of the hearing  
19 of the petition. The district attorney shall make his or her best efforts to contact the  
20 victim, if any, to notify the victim of the request for expunction prior to the date of the  
21 hearing.

22 (d) The court in which the petition was filed shall take the following steps and  
23 shall consider the following issues in rendering a decision upon a petition for expunction  
24 of records of a nonviolent felony under this section:

25 (1) Call upon a probation officer for additional investigation or  
26 verification of the petitioner's conduct during the four-year period  
27 since the date of conviction of the nonviolent felony in question.

28 (2) Review the petitioner's juvenile record, ensuring that the petitioner's  
29 juvenile records remain separate from adult records and files and are  
30 withheld from public inspection as provided under Article 30 of  
31 Chapter 7B of the General Statutes.

32 (3) Review the amount of restitution made by the petitioner to the victim  
33 of the nonviolent felony to be expunged and give consideration to  
34 whether or not restitution was paid in full.

35 (4) Review any other information the court deems relevant, including, but  
36 not limited to, affidavits or other testimony provided by law  
37 enforcement officers, district attorneys, and victims of nonviolent  
38 felonies committed by the petitioner.

39 (e) The court may order that the person be restored, in the contemplation of the  
40 law, to the status the person occupied before the arrest or indictment or information if the  
41 court finds all of the following after a hearing:

42 (1) The petitioner has remained of good moral character and has been free  
43 of conviction of any felony or misdemeanor, other than a traffic  
44 violation, for four years from the date of conviction of the nonviolent  
45 felony in question or any active sentence, period of probation, or  
46 post-release supervision has been served, whichever is later.

- 1 (2) The petitioner has not previously been convicted of any felony or  
2 misdemeanor other than a traffic violation under the laws of the United  
3 States or the laws of this State or any other state.
- 4 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 5 (4) The petitioner has no outstanding restitution orders or civil judgments  
6 representing amounts ordered for restitution entered against the  
7 petitioner.
- 8 (5) The petitioner was less than 18 years old at the time of the commission  
9 of the offense in question.
- 10 (6) The petitioner has performed at least 100 hours of community service  
11 since the time of the conviction and possesses a high school diploma, a  
12 high school graduation equivalency certificate, or a General Education  
13 Development degree.
- 14 (7) The search of the confidential records of expunctions conducted by the  
15 Administrative Office of the Courts shows that the petitioner has not  
16 been previously granted an expunction.

17 (f) No person as to whom an order has been entered pursuant to subsection (e) of  
18 this section shall be held thereafter under any provision of any laws to be guilty of  
19 perjury or otherwise giving a false statement by reason of that person's failure to recite or  
20 acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing  
21 certification under the provisions of Chapter 17C or 17E of the General Statutes,  
22 however, shall disclose any and all felony convictions to the certifying Commission  
23 regardless of whether or not the felony convictions were expunged pursuant to the  
24 provisions of this section.

25 Persons required by State law to obtain a criminal history record check on a  
26 prospective employee shall not be deemed to have knowledge of any convictions  
27 expunged under this section.

28 (g) The court shall also order that the nonviolent felony conviction be expunged  
29 from the records of the court and direct all law enforcement agencies bearing record of  
30 the same to expunge their records of the conviction. The clerk shall notify State and local  
31 agencies of the court's order as provided in G.S. 15A-150.

32 (h) Any other applicable State or local government agency shall expunge from its  
33 records entries made as a result of the conviction ordered expunged under this section.  
34 The agency shall also reverse any administrative actions taken against a person whose  
35 record is expunged under this section as a result of the charges or convictions expunged.  
36 This subsection shall not apply to the Department of Justice for DNA records and  
37 samples stored in the State DNA Database and the State DNA Databank.

38 (i) Any person eligible for expunction of a criminal record under this section  
39 shall be notified about the provisions of this section by the probation officer assigned to  
40 that person. If no probation officer is assigned, notification of the provisions of this  
41 section shall be provided by the court at the time of the conviction of the felony which is  
42 to be expunged under this section."

43 **SECTION 3.** G.S. 15A-145(d1) is repealed.

1           **SECTION 4.** G.S. 15A-146 reads as rewritten:

2   **"§ 15A-146. Expunction of records when charges are dismissed or there are**  
3       **findings of not guilty.**

4       (a) If any person is charged with a crime, either a misdemeanor or a felony, or  
5       was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the  
6       charge is dismissed, or a finding of not guilty or not responsible is entered, that person  
7       may apply to the court of the county where the charge was brought for an order to  
8       expunge from all official records any entries relating to his apprehension or trial. The  
9       court shall hold a hearing on the application and, upon finding that the person had not  
10      previously received an expungement under this section, G.S. 15A-145, G.S. 15A-145.1,  
11      15A-145.2, ~~or 15A-145.3,~~ 15A-145.3, 15A-145.4, or 15A-145.5, and that the person had  
12      not previously been convicted of any felony under the laws of the United States, this  
13      State, or any other state, the court shall order the expunction. No person as to whom such  
14      an order has been entered shall be held thereafter under any provision of any law to be  
15      guilty of perjury, or to be guilty of otherwise giving a false statement or response to any  
16      inquiry made for any purpose, by reason of his failure to recite or acknowledge any  
17      expunged entries concerning apprehension or trial.

18      (al) Notwithstanding subsection (a) of this section, if a person is charged with  
19      multiple offenses and all the charges are dismissed, or findings of not guilty or not  
20      responsible are made, then a person may apply to have each of those charges expunged if  
21      the offenses occurred within the same 12-month period of time or if the charges are  
22      dismissed or findings are made at the same term of court. Unless circumstances otherwise  
23      clearly provide, the phrase "term of court" shall mean one week for superior court and  
24      one day for district court. There is no requirement that the multiple offenses arise out of  
25      the same transaction or occurrence or that the multiple offenses were consolidated for  
26      judgment. The court shall hold a hearing on the application. If the court finds (i) that the  
27      person had not previously received an expungement under this subsection, or that any  
28      previous expungement received under this subsection occurred prior to October 1, 2005  
29      and was for an offense that occurred within the same 12-month period of time, or was  
30      dismissed or findings made at the same term of court, as the offenses that are the subject  
31      of the current application, (ii) that the person had not previously received an  
32      expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, ~~or 15A-145.3,~~ 15A-145.3,  
33      15A-145.4, or 15A-145.5, and (iii) that the person had not previously been convicted of  
34      any felony under the laws of the United States, this State, or any other state, the court  
35      shall order the expunction. No person as to whom such an order has been entered shall be  
36      held thereafter under any provision of any law to be guilty of perjury, or to be guilty of  
37      otherwise giving a false statement or response to any inquiry made for any purpose, by  
38      reason of his failure to recite or acknowledge any expunged entries concerning  
39      apprehension or trial.

40      (b) The court may also order that the said entries, including civil revocations of  
41      drivers licenses as a result of the underlying charge, shall be expunged from the records  
42      of the court, and direct all law-enforcement agencies, the Division of Adult Correction of  
43      the Department of Public Safety, the Division of Motor Vehicles, and any other State or  
44      local government agencies identified by the petitioner as bearing record of the same to  
45      expunge their records of the entries, including civil revocations of drivers licenses as a  
46      result of the underlying charge being expunged. This subsection does not apply to civil or



1 criminal charges based upon the civil revocation, or to civil revocations under G.S.  
2 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in  
3 G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of  
4 Motor Vehicles for the expunction of a civil revocation provided the underlying criminal  
5 charge is also expunged. The civil revocation of a drivers license shall not be expunged  
6 prior to a final disposition of any pending civil or criminal charge based upon the civil  
7 revocation. The costs of expunging the records, as required under G.S. 15A-150, shall not  
8 be taxed against the petitioner.

9 (b1) Any person entitled to expungement under this section may also apply to the  
10 court for an order expunging DNA records when the person's case has been dismissed by  
11 the trial court and the person's DNA record or profile has been included in the State DNA  
12 Database and the person's DNA sample is stored in the State DNA Databank. A copy of  
13 the application for expungement of the DNA record or DNA sample shall be served on  
14 the district attorney for the judicial district in which the felony charges were brought not  
15 less than 20 days prior to the date of the hearing on the application. If the application for  
16 expungement is granted, a certified copy of the trial court's order dismissing the charges  
17 shall be attached to an order of expungement. The order of expungement shall include the  
18 name and address of the defendant and the defendant's attorney and shall direct the SBI to  
19 send a letter documenting expungement as required by subsection (b2) of this section.

20 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1)  
21 of this section, the SBI shall purge the DNA record and all other identifying information  
22 from the State DNA Database and the DNA sample stored in the State DNA Databank  
23 covered by the order, except that the order shall not apply to other offenses committed by  
24 the individual that qualify for inclusion in the State DNA Database and the State DNA  
25 Databank. A letter documenting expungement of the DNA record and destruction of the  
26 DNA sample shall be sent by the SBI to the defendant and the defendant's attorney at the  
27 address specified by the court in the order of expungement.

28 (c) The clerk shall notify State and local agencies of the court's order as provided  
29 in G.S. 15A-150."

30 **SECTION 5.** G.S. 15A-151(a) reads as rewritten:

31 **"§ 15A-151. Confidential agency files; exceptions to expunction.**

32 (a) The Administrative Office of the Courts shall maintain a confidential file  
33 containing the names of those people for whom it received a notice under G.S. 15A-150.  
34 The information contained in the file may be disclosed only as follows:

- 35 (1) To a judge of the General Court of Justice of North Carolina for the  
36 purpose of ascertaining whether a person charged with an offense has  
37 been previously granted a discharge or an expunction.
- 38 (2) To a person requesting confirmation of the person's own discharge or  
39 expunction, as provided in G.S. 15A-152.
- 40 (3) To the General Court of Justice of North Carolina in response to a  
41 subpoena or other court order issued pursuant to a civil action under  
42 G.S. 15A-152.
- 43 (4) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~  
44 G.S. 15A-145.4 or G.S. 15A-145.5, to State and local law enforcement  
45 agencies for employment purposes only.

1 (5) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~  
2 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Criminal  
3 Justice Education and Training Standards Commission for certification  
4 purposes only.

5 (6) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~  
6 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Sheriffs'  
7 Education and Training Standards Commission for certification  
8 purposes only."

9 **SECTION 6.** G.S. 17C-13(b) reads as rewritten:

10 "(b) Notwithstanding ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, the  
11 Commission may gain access to a person's felony conviction records, including those  
12 maintained by the Administrative Office of the Courts in its confidential files containing  
13 the names of persons granted expunctions. The Commission may deny, suspend, or  
14 revoke a person's certification based solely on that person's felony conviction, whether or  
15 not that conviction was expunged."

16 **SECTION 7.** G.S. 17E-12 reads as rewritten:

17 "(b) Notwithstanding ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, the  
18 Commission may gain access to a person's felony conviction records, including those  
19 maintained by the Administrative Office of the Courts in its confidential files containing  
20 the names of persons granted expunctions. The Commission may deny, suspend, or  
21 revoke a person's certification based solely on that person's felony conviction, whether or  
22 not that conviction was expunged."

23 **SECTION 8.** Sections 2, 3, and 4 of this act become effective December 1,  
24 2012, and apply to petitions filed on or after that date, but petitions filed prior to that date  
25 are not abated by this act. The remainder of this act becomes effective December 1, 2012.



**NORTH CAROLINA GENERAL ASSEMBLY**  
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O. Walker Reagan  
Director

**TO:** Members of the LRC Committee on Criminal Record Expunctions  
**FROM:** Brenda Carter and Susan Sitze, Committee Co-Counsel  
**RE:** Summary of North Carolina Law Concerning the Expunction of Criminal Records

In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction and a person may generally be granted only one expungement in his or her lifetime. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. This memorandum contains a brief overview of the circumstances under which expunction is authorized in this State.

**Expunction When Charges Dismissed/Not Guilty**

- ***Charges Dismissed Or Person Found Not Guilty*** - G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. *Persons who have previously received an expungement under this or other specified provisions, or persons who have previously been convicted of a felony would not qualify under this provision.*
- ***Charges Dismissed Or Person Found Not Guilty As A Result Of Identity Fraud*** - G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged. *There is no limit to the number of times a person who is the victim of identity fraud can qualify for an expungement under this provision.*
- ***Charges Dismissed Or Person Found Not Guilty Of Certain Drug-Related Offenses Committed While Not Over The Age Of 21*** - G.S. 15A-145.2(b) provides for the expunction of records when a person is charged with misdemeanor possession of a controlled substance or possession of less than 1 gram of cocaine\*, and the charges are subsequently dismissed or there is a finding of not guilty. *An order of expunction must be entered if the court determines that the person was not over 21 at the time of the offense for which the person was charged.* A similar provision is contained in G.S. 15A-145.3(b) with regard to misdemeanor violations of the Toxic Vapors Act and possession of drug paraphernalia. *\*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*
- ***Pardon of Innocence*** – G.S. 15A-149 provides for the expunction of records when a person has been granted a pardon of innocence by the Governor.

## Appendix E – Expunction in North Carolina

### Expunction When the Offender Was Under a Specified Age at the Time of the Offense

- **Juvenile Records** - G.S. 7B-3200 provides for a person to petition for the expunction of records relating to the person's having been adjudicated delinquent or undisciplined while a minor. *This provision does not allow the expunction of records relating to an offense that would have been a Class A-E felony if committed by an adult.* The statute also provides for expunction of juvenile records when a juvenile petition was dismissed without adjudication.
- **Convictions of Misdemeanor Committed While under the Age of 18** - G.S. 15A-145 provides for the expunction of records for first offenders convicted of a misdemeanor committed while under the age of 18. *A person who is convicted of a misdemeanor committed prior to reaching the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions within that time period.*
- **Misdemeanor Possession of Alcohol Committed While under the Age of 21** - G.S. 15A-145 also provides for the expunction of records for first offenders convicted of misdemeanor possession of alcohol who were under the age of 21 at the time the offense was committed. *A person who is convicted of misdemeanor possession of alcohol committed while under the age of 21 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Misdemeanor Cyberbullying Committed While under the Age of 18** – G.S. 14-458.1(c) provides for the conditional discharge and dismissal of a misdemeanor cyberbullying offense committed while under the age of 18 and provides that expunction may be obtained pursuant to G.S. 15A-146. *(See Charges Dismissed or Person Found Not Guilty above)*
- **Certain Gang Offenses Committed While under the Age of 18** – G.S. 15A-145.1 provides for the expunction of records for first offenders who are either: (i) convicted of, or (ii) discharged and dismissed, for certain gang offenses, when the offense was committed while the offender was under the age of 18. *A person who is convicted of, or discharged and dismissed for, one of these offenses committed while under the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Nonviolent Felonies Committed While under the Age of 18 – (Effective December 1, 2011)** G.S. 15A-145.4 (as enacted in Senate Bill 397, Session Law 2011-278) provides for the expunction of records for first offenders who are convicted of a Class H or Class I felony committed while the offender was under the age of 18. The provision does not apply to any felony that includes assault as an essential element of the offense, or to any offense that requires the person to register as a sex offender or that is otherwise specifically excluded. *A person who is convicted of an eligible felony offense committed while under the age of 18 may have that conviction expunged after 4 years, provided the person has completed any active sentence, period of probation, and post-release supervision, and there have been no other convictions in that time period. A petitioner seeking expunction under this provision must possess a high school diploma, a high school*

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*graduation equivalency certificate, or a GED, and must have completed at least 100 hours of community service since the conviction.*

- ***Conditional Discharge and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(a) and G.S. 15A-145.3(a) authorize the expunction of records for offenses discharged and dismissed pursuant to G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). These conditional discharges and dismissals are for first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. When such person pleads guilty to or is found guilty of misdemeanor drug possession, possession of less than one gram of cocaine\*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the offender on probation under certain conditions. *Discharge and dismissal under this provision may occur only once with respect to any person. \*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*
- ***Cancellation and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(c) and G.S. 15A-145.3(c) apply to first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. No sooner than 12 months after conviction, the person may apply to the court to have a conviction of misdemeanor drug possession, possession of less than one gram of cocaine\*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, cancelled and records of that conviction expunged. *Cancellation and expunction under this provision may occur only once with respect to any person. \*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*

### **Expunction of Larceny Conviction after 15 Years Have Elapsed From Date of Conviction**

- ***Misdemeanor Larceny*** – G.S. 15A-145(d1) provides for the expunction of a misdemeanor conviction of misdemeanor larceny pursuant to G.S. 14-72(a) if the person has no felony convictions, it has been at least 15 years since the conviction for misdemeanor larceny, and the person has had no felony or misdemeanor convictions during that 15 year period.

Appendix E – Expunction in North Carolina

EXPUNCTION OF CRIMINAL RECORDS IN NORTH CAROLINA

| CITATION   | ELIGIBLE OFFENSES  | WAITING PERIOD | STIPULATIONS   |
|--|--|----------------|--|
| G.S. 15A-146<br><br>Charges Dismissed or there is a finding of Not Guilty                              | Misdemeanor or felony.<br><br>Infraction under G.S. 18B-302(i) [purchase or possession of malt beverages or unfortified wine, or consumption of any alcoholic beverage, by a person 19 or 20 years old] prior to December 1, 1999.   | None           | Charges dismissed or finding of not guilty for offense.<br><br>Not applicable if person has had previous expungement* of any kind or has a felony conviction.<br><br><i>*Unless the previous expungement was prior to October 1, 2005 and was for an offense that occurred within the same 12-month period or was dismissed in the same term of court as the offense(s) for which the current expungement is sought.</i> |
| G.S. 15A-147<br><br>Charges Dismissed or there is a finding of Not Guilty, as Result of Identity Theft | Infraction, misdemeanor or felony  | None           | Charges brought as result of identity theft and charges dismissed, finding of not guilty, or conviction is set aside.<br><br>No costs taxed against petitioner.  |
| G.S. 15A-145.2(b)<br>G.S. 15A-145.3(b)<br><br>Charges Dismissed Certain Drug Offenses/Toxic Vapors Act | --Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br>--Felony possession of less than 1 gram of cocaine.*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance. (HB 642, Session Law 2011-192)</i> | None           | Charges dismissed or finding of not guilty.<br><br>Person must be 21 or under at time of offense.  |

# Appendix E – Expunction in North Carolina

| CITATION  | ELIGIBLE OFFENSES  | WAITING PERIOD   | STIPULATIONS   |
|---|--|--|--|
| G.S. 15A-149<br><b>Pardon of Innocence</b>  | Any offense  | None   | Petitioner has received pardon of innocence from the Governor  |
| G.S. 7B-3200(h)<br><b>Juvenile Records</b><br>Alleged Delinquent/Undisciplined            | Any allegation of juvenile delinquency.  | Petitioner is 16 years or older.   | Delinquency alleged, but juvenile petition dismissed.  |
|   | Any allegation of undisciplined juvenile.  | Petitioner is 18 years or older.   | Undisciplined alleged, but juvenile petition dismissed.  |
|   | Any adjudication of undisciplined.   | Petitioner is 18 years or older.   |  |
| G.S. 7B-3200(a),(b)<br><b>Juvenile Records</b><br>Adjudicated<br>Delinquent/Undisciplined | Any adjudication of delinquency for a misdemeanor or Class F-I felony.   | For delinquency, at least 18 months after release from juvenile court jurisdiction.  | Petitioner has had no subsequent delinquent adjudications or convictions of a misdemeanor or felony as an adult.   |
| G.S. 15A-145<br><b>First Offender Under 18</b><br>(Age 21 for certain alcohol offenses)   | Misdemeanor  | Whichever of the following is later:<br>• 2 years after the date of conviction;<br>• Completion of any period of probation,  | No other convictions, and<br>Petitioner must have been:<br>• Under 18 at the time of the offense; or<br>• If offense is misdemeanor possession of alcohol in violation of G.S. 18B-302(b)(1), petitioner must have been under 21 at the time of the offense. |
| G.S. 15A-145.1 and G.S. 14-50.29<br><b>Certain Gang Offenses</b>                          | Class H felony under Street Gang Suppression Act<br><br>Enhanced offense under G.S. 14-50.22 (enhances any criminal offense by one class if done as part of gang activity) | After discharge and dismissal ; or<br>For convictions, whichever of the following is later:<br>• 2 years after the date of conviction;<br>• Completion of any period of probation. | Petitioner must have been under 18 at the time of the offense.<br><br>Petitioner has no prior misdemeanor or felony convictions.   |

## Appendix E – Expunction in North Carolina

| CITATION  | ELIGIBLE OFFENSES   | WAITING PERIOD   | STIPULATIONS  |
|---|---|--|---|
| G.S. 14-458.1(c)<br><b>Cyberbullying</b>  | Cyberbullying by person under the age of 18 years.  | Upon discharge and dismissal.  | Petitioner must have been under 18 at the time of the offense.<br><br>Expunction is pursuant to G.S. 15A-146.   |
| G.S. 15A-145.2(a)<br>G.S. 15A-145.3(a)<br><b>First-time drug offenders</b><br>(Discharge & Dismissal) | Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br><br>Felony possession of less than 1 gram of cocaine.*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i> | Upon discharge and dismissal under G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). | Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior discharge and dismissal under this statute. |
| G.S. 15A-145.2(c)<br>G.S. 15A-145.3(c)<br><b>First-time drug offenders</b><br>(Convicted)             | Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br>Felony possession of less than 1 gram of cocaine*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i>      | No sooner than 12 months after conviction.   | Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior expunctions under this statute.             |
| G.S. 15A-145(d1)<br><b>Misdemeanor Larceny</b>  | Misdemeanor larceny pursuant to G.S. 14-72(a); value of goods \$1,000 or less.  | 15 years from date of conviction.  | Petitioner must have no felony convictions; and no misdemeanor convictions in the 15 years prior to petition for expunction.                              |



# Appendix E – Expunction in North Carolina

| CITATION   | ELIGIBLE OFFENSES  | WAITING PERIOD                            | STIPULATIONS  |
|--|--|---|---|
| <p>G.S. 15A-145.4<br/> <i>(as enacted in Senate Bill 397, Session Law 2011-278 and effective December 1, 2011)</i></p> <p><b>Nonviolent Felony</b></p> | <p>Class H or Class I felony that does not include assault as an essential element of the offense, does not require the offender to register as a sex offender, or is otherwise specifically excluded.</p> | <p>Four years from date of conviction</p> | <p>Petitioner must have been under 18 at the time of the offense.</p> <p>Petitioner must possess a high school diploma, graduation equivalency certificate, or a GED; and must have completed at least 100 hours of community service since the conviction.</p> |

Chart Prepared by: Brenda Carter & Susan Sitze, Staff Attorneys  
Research Division, NC General Assembly

**Attachment IV**

**NC Justice Center, NC Second Chance Alliance  
Presentation to the LRC Committee on Criminal Record Expunctions  
April 18, 2012**

---

Good morning Mr. Chairman and members of the committee. My name is Daniel Bowes, I am a staff attorney at the North Carolina Justice Center where I advocate on behalf of individuals with criminal records. I am also a member of the Second Chance Alliance, a statewide alliance of service providers, community leaders, advocates, individuals with criminal records, and faith-based organizations that promotes policies that remove barriers to the reintegration and productive citizenship of individuals with criminal convictions.

On behalf of the NC Justice Center and the Second Chance Alliance, I urge you to continue the recent efforts of the General Assembly by extending opportunities for expungement to adults convicted of a single nonviolent misdemeanor or felony (or 2 if the convictions occurred in the same session of court). The draft bill being examined by the committee today would make a huge difference in the lives of eligible individuals—individuals who have demonstrated through years of good behavior their ability and commitment to being responsible members of their communities.

In my experience, the majority of individuals with criminal records are sincerely committed to being responsible and contributing members of their families and communities. However, a criminal conviction often acts as a lifetime ban to meaningful employment, affordable housing, and family supports. These unnecessary barriers to successful reintegration to society contribute to unnecessarily high rates of recidivism in North Carolina—recidivism which undermines community safety, wastes state resources, and further isolates at-risk populations.

Expanded expungement opportunities are a reasonable and valuable response to these barriers to reentry, and could provide relief to individuals who have long demonstrated a commitment to responsible living through their good behavior. While the Justice Center and Second Chance Alliance generally support this draft bill, there is one change that must be made: I urge members of the committee to lower the 15-year waiting period to 7 years. Several recent studies demonstrate that after 7 years an individual with a felony conviction is no more likely to commit a crime than a member of the general public.

I'll close by sharing a story of a client I currently represent. At the age of 17, Luther was convicted of a single nonviolent felony—he took full responsibility for his participation in the crime, served his sentence, and is repentant. He is now 36 years old, a college graduate, and a supportive father. Despite his achievements since his conviction, his opportunities have been consistently and significantly limited by his criminal record. But because of the actions of the General Assembly last year, a court now has the opportunity to examine Luther's life since his conviction and grant him an expungement. He now has a chance to regain his life, to more fully support his family and contribute to his community. By supporting this bill, preferably with a research-based waiting period of 7 years, you would be providing similar opportunities to many individuals who are just as deserving as Luther.

Thank you for your time and consideration.



Attachment V

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Bill \_\_\_\_\_

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

\_\_\_\_\_ ASA-48 [v.2]

Page 1 of 1

Comm. Sub. [NO]  
Amends Title [NO]

Date \_\_\_\_\_, 2012

*Randkema*

Representative T. Moore

- 1 moves to amend the report on page 17, line 31
- 2 by deleting "10" and inserting "30";
- 3
- 4 and on page 17, line 33, by inserting the following at the end of that line
- 5 "Upon good cause shown, the court may grant the district attorney an additional 30 days to file
- 6 objection to the petition.".

SIGNED \_\_\_\_\_

*Rep. Shirley Randkema*  
Amendment Sponsor

SIGNED \_\_\_\_\_

Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_



\* UNKNOWN - ASA - 48 - V - 2 \*



Attachment V1

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Bill \_\_\_\_\_

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

\_\_\_\_\_ ASA-49 [v.1]

Page 1 of 1

Comm. Sub. [NO]  
Amends Title [NO]

Date \_\_\_\_\_, 2012

*Randleman*  
Representative T. Moore

- 1 moves to amend the report on page 17, line 30
- 2 by rewriting that line to read:
- 3 "Upon filing of the petition, the petition shall be served upon the district attorney of the court
- 4 wherein the case".

SIGNED *Rep. Shirley Randleman*  
Amendment Sponsor

SIGNED \_\_\_\_\_  
Committee Chair if Senate Committee Amendment

ADOPTED ✓ FAILED \_\_\_\_\_ TABLED \_\_\_\_\_



\* U N K N O W N - A S A - 4 9 - V - 1 \*



Attachment VII

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT  
Bill \_\_\_\_\_

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

\_\_\_\_\_ ASA-50 [v.1]

Page 1 of 1

Comm. Sub. [NO]  
Amends Title [NO]

Date \_\_\_\_\_, 2012

*Randeman*  
Representative ~~T. Moore~~

- 1 moves to amend the report on page 17, line 34
- 2 by deleting "judge to whom the petition is presented" and insert "presiding judge".

SIGNED \_\_\_\_\_

*Rep. Shirley Randeman*  
Amendment Sponsor

SIGNED \_\_\_\_\_

Committee Chair if Senate Committee Amendment

ADOPTED ☒ \_\_\_\_\_

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_



\* U N K N O W N - A S A - 5 0 - V - 1 \*



Attachment VIII

NORTH CAROLINA GENERAL ASSEMBLY  
AMENDMENT

Bill \_\_\_\_\_

AMENDMENT NO. \_\_\_\_\_  
(to be filled in by  
Principal Clerk)

\_\_\_\_\_ ASA-52 [v.1]

Page 1 of 1

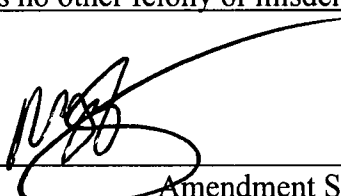
Comm. Sub. [NO]  
Amends Title [NO]

Date \_\_\_\_\_, 2012

Representative Glazier

- 1 moves to amend the report on page 17, line 38
- 2 by rewriting the line to read:
- 3 "If the court, after hearing, finds that the petitioner has not been previously granted an
- 4 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4,
- 5 the petitioner has no other felony or misdemeanor".

SIGNED \_\_\_\_\_

  
Amendment Sponsor

SIGNED \_\_\_\_\_

Committee Chair if Senate Committee Amendment

ADOPTED \_\_\_\_\_

FAILED \_\_\_\_\_

TABLED \_\_\_\_\_



\* U N K N O W N - A S A - 5 2 - V - 1 \*

# NORTH CAROLINA GENERAL ASSEMBLY

## LEGISLATIVE RESEARCH COMMISSION

STATE LEGISLATIVE BUILDING

RALEIGH, NC 27601



April 18, 2012

TO THE MEMBERS OF THE LEGISLATIVE RESEARCH COMMISSION:

Attached for your consideration is the report to the 2012 Regular Session of the 2011 General Assembly. This report was prepared by the Legislative Research Commission's Committee on Criminal Record Expunctions, pursuant to G.S. 120-30.17(1).

Representative N. Leo Daughtry

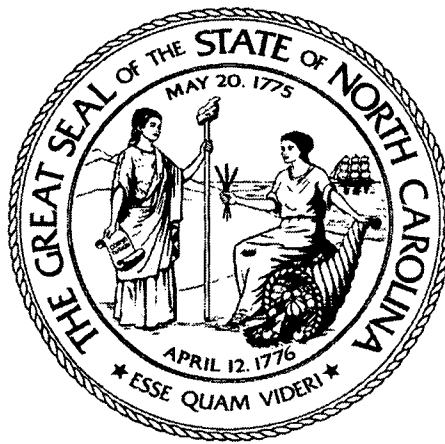
Chair

Committee on Criminal Record Expunctions  
Legislative Research Commission

LEGISLATIVE RESEARCH COMMISSION

**CRIMINAL RECORD EXPUNCTIONS  
COMMITTEE**

**NORTH CAROLINA GENERAL ASSEMBLY**



**REPORT TO THE  
2012 SESSION  
of the  
2011 GENERAL ASSEMBLY  
OF NORTH CAROLINA**

APRIL, 2012



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## TRANSMITTAL LETTER

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TO THE MEMBERS OF THE 2012 REGULAR SESSION  
OF THE 2011 GENERAL ASSEMBLY

The Legislative Research Commission herewith submits to you for your consideration its report and recommendations to the 2012 Regular Session of the 2011 General Assembly. The report was prepared by the Legislative Research Commission's Committee on Criminal Record Expunctions, pursuant to G.S. 120-30.70(1).

Respectfully submitted,

---

Senator Philip E. Berger  
President Pro Tempore of the Senate

---

Representative Thomas R. Tillis  
Speaker of the House of Representatives

Co-Chairs  
Legislative Research Commission

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## LEGISLATIVE RESEARCH COMMISSION MEMBERSHIP

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2011 – 2012

**President Pro Tempore of the Senate**

Senator Philip E. Berger  
Co-Chair

Senator Thomas M. Apodaca  
Acting Co-Chair

Senator Peter S. Brunstetter  
Senator Linda D. Garrou  
Senator Martin L. Nesbitt, Jr.  
Senator Richard Y. Stevens

**Speaker of the House of Representatives**

Representative Thomas R. Tillis  
Co-Chair

Representative Timothy K. Moore  
Acting Co-Chair

Representative John M. Blust  
Representative Justin P. Burr  
Representative Mike D. Hager  
Representative Edith D. Warren

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## PREFACE

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The Legislative Research Commission, established by Article 6B of Chapter 120 of the General Statutes, is the general purpose study group in the Legislative Branch of State Government. The Commission is co-chaired by the President Pro Tempore of the Senate and the Speaker of the House of Representatives and has five additional members appointed from each house of the General Assembly. Among the Commission's duties is that of making or causing to be made, upon the direction of the General Assembly, "such studies of and investigation into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner" (G.S. 120-30.17(1)).

The Legislative Research Commission authorized the study of Criminal Record Expunctions, under authority of G.S. 120-30.17(1). The Committee was chaired by Representative N. Leo Daughtry. The full membership of the Committee is listed under [Committee Membership](#). A committee notebook containing the committee minutes and all information presented to the committee will be filed in the Legislative Library by the end of the **2011-2012** biennium.

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## COMMITTEE PROCEEDINGS

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The Legislative Research Commission's Committee on Criminal Record Expunctions met two times after the 2011 Regular Session. The Committee's Charge can be found [here](#). The following is a brief summary of the Committee's proceedings. Detailed minutes and information from each Committee meeting are available in the Legislative Library.

### **November 17, 2011 Meeting**

The initial meeting of the LRC Committee on Criminal Record Expunctions began with a review of the Committee's charge and the adoption of an operating budget for the Committee. Committee staff provided an overview of North Carolina laws pertaining to the expunction of criminal records. (See Appendix E)

Committee members engaged in an open discussion of issues and concerns for consideration during the course of the Committee's deliberations. The Committee provided interested parties an opportunity to be heard on the issue.

### **April 18, 2012**

The Committee met to finalize and adopt its final report containing its findings and recommendations to the Legislative Research Commission.

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## FINDINGS AND RECOMMENDATIONS

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### Findings

The Committee makes the following findings regarding the expunction of criminal records:

1. In general, expunction is allowed in limited circumstances to remove information about a charge or conviction of a criminal offense from the records of certain classes of people. Once the record is expunged, any information related to the offense is permanently deleted from the record and the individual may deny the incident ever occurred.
2. In North Carolina, individuals who are eligible for expunction include:
  - Those who had charges brought against them, but those charges were ultimately dismissed or the person was found not guilty.
  - Those who received a pardon of innocence from the Governor of North Carolina.
  - Those who were the victim of identity theft (i.e. the person arrested for the crime provided another person's name and information to the police instead of their own).
  - Those 18 years of age or older wishing to expunge juvenile records of minor offenses.
  - First-time offenders 21 years old or younger charged with a minor alcohol offense or drug possession crime.
3. Information about a person's criminal record can be accessed by potential employers, landlords and others running criminal background checks. Consequently, many people are increasingly aware of the effect a criminal conviction can have on their lives and how it can impact everything from their ability to get a job or rent an apartment, to their ability to gain credit or to retain a professional license.
4. Expunction is a process that can and should be used to give people who have committed minor crimes a clean slate and a fresh start, especially when a significant amount of time has passed without further trouble.

### Recommendation

The Committee recommends that the General Assembly enact Legislative Proposal I:

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

---

## COMMITTEE MEMBERSHIP

---

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2011-2012

**Speaker of the House of Representatives Appointments:**

Representative N. Leo Daughtry, Chair

Representative John Blust

Representative Richard Glazier

Representative Timothy Moore

Representative Shirley Randleman

Representative Timothy Spear

Representative Sarah Stevens



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## COMMITTEE CHARGE

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The Legislative Research Commission's Committee on Criminal Record Expunctions may study whether current law strikes an appropriate balance between an employer's need for access to accurate criminal history information about potential employees and the need for a person who committed a relatively minor offense in the distant past to obtain employment in spite of the person's criminal history. If the Committee finds that it may be possible to achieve a better balance between these interests, then the Committee may further consider what type of expunction procedure may be developed and implemented that addresses the interests and concerns of employers, but also affords some appropriate relief to persons with a relatively minor past criminal conviction. In its study, the Committee may consider all of the following:

- (1) The effect of a person's criminal record with regard to a person's ability to obtain employment.
- (2) The reasons that an employer may need to know about a potential employee's criminal record.
- (3) What types of criminal records may or may not be relevant with regard to certain types of employment.
- (4) What criminal offenses, if any, it may be reasonable to allow to be expunged from a person's record, the time period or other criteria that should be used to determine whether it is appropriate to allow the expunction, and whether the offense should be completely erased from the criminal record so that the person has no criminal record, or retained but limit the accessibility of the record only for certain purposes.
- (5) Any other issues the Committee considers relevant to this topic.

Authority: LRC 2011 HJR 760

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## STATUTORY AUTHORITY

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### NORTH CAROLINA GENERAL STATUTES ARTICLE 6B.

#### **Legislative Research Commission.**

##### **§ 120-30.17. Powers and duties.**

The Legislative Research Commission has the following powers and duties:

- (1) Pursuant to the direction of the General Assembly or either house thereof, or of the chairmen, to make or cause to be made such studies of and investigations into governmental agencies and institutions and matters of public policy as will aid the General Assembly in performing its duties in the most efficient and effective manner.
- (2) To report to the General Assembly the results of the studies made. The reports may be accompanied by the recommendations of the Commission and bills suggested to effectuate the recommendations.
- (3), (4) Repealed by Session Laws 1969, c. 1184, s. 8.
- (5), (6) Repealed by Session Laws 1981, c. 688, s. 2.
- (7) To obtain information and data from all State officers, agents, agencies and departments, while in discharge of its duty, pursuant to the provisions of G.S. 120-19 as if it were a committee of the General Assembly.
- (8) To call witnesses and compel testimony relevant to any matter properly before the Commission or any of its committees. The provisions of G.S. 120-19.1 through G.S. 120-19.4 shall apply to the proceedings of the Commission and its committees as if each were a joint committee of the General Assembly. In addition to the other signatures required for the issuance of a subpoena under this subsection, the subpoena shall also be signed by the members of the Commission or of its committee who vote for the issuance of the subpoena.
- (9) For studies authorized to be made by the Legislative Research Commission, to request another State agency, board, commission or committee to conduct the study if the Legislative Research Commission determines that the other body is a more appropriate vehicle with which to conduct the study. If the other body agrees, and no legislation specifically provides otherwise, that body shall conduct the study as if the original authorization had assigned the study to that body and shall report to the General Assembly at the same time other studies to be conducted by the Legislative Research Commission are to be reported. The other agency shall conduct the transferred study within the funds already assigned to it.

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## LEGISLATIVE PROPOSAL I

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### A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR NONVIOLENT MISDEMEANORS AFTER 15 YEARS FOR PERSONS WHO HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED STATES, THIS STATE, OR ANY OTHER JURISDICTION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Chapter 15A of the General Statutes is amended to add a new section to read:

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

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

- (1) A Class A through G felony or a Class A1 misdemeanor.
- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
- (7) An offense under G.S. 14-401.16.
- (8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or misdemeanor convictions shall be treated as one nonviolent felony or misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or misdemeanor convictions shall be expunged from the person's record in accordance with this section.

1       (c) A person may file a petition in the court where the person was convicted for  
2 expunction of a nonviolent misdemeanor or nonviolent felony conviction from the  
3 person's criminal record if the person has no other misdemeanor or felony convictions,  
4 other than a traffic violation, and was convicted of a nonviolent misdemeanor or  
5 nonviolent felony that is eligible pursuant to subsection (b) of this section. The petition  
6 shall not be filed earlier than 15 years after the date of the conviction or when any active  
7 sentence, period of probation, and post-release supervision has been served, whichever  
8 occurs later. The petition shall contain, but not be limited to, the following:

9           (1) An affidavit by the petitioner that the petitioner has been of good  
10 behavior since the completion of any sentence received for the  
11 nonviolent misdemeanor or nonviolent felony, and has not been  
12 convicted of any other felony or misdemeanor other than a traffic  
13 violation under the laws of the United States or the laws of this State  
14 or any other state.

15          (2) Verified affidavits of two persons who are not related to the petitioner  
16 or to each other by blood or marriage, that they know the character and  
17 reputation of the petitioner in the community in which the petitioner  
18 lives and that the petitioner's character and reputation are good.

19          (3) A statement that the petition is a motion in the cause in the case  
20 wherein the petitioner was convicted.

21          (4) An application on a form approved by the Administrative Office of the  
22 Courts requesting and authorizing a name-based State and national  
23 criminal record check by the Department of Justice using any  
24 information required by the Administrative Office of the Courts to  
25 identify the individual and a search of the confidential record of  
26 expunctions maintained by the Administrative Office of the Courts.  
27 The application shall be forwarded to the Department of Justice and to  
28 the Administrative Office of the Courts, which shall conduct the  
29 searches and report their findings to the court.

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

33       Upon filing of the petition, the petition shall be served upon the district attorney of  
34 the court wherein the case was tried resulting in conviction. The district attorney shall  
35 have 30 days thereafter in which to file any objection thereto and shall be duly notified as  
36 to the date of the hearing of the petition. Upon good cause shown, the court may grant the  
37 district attorney an additional 30 days to file objection to the petition.

38       The presiding judge is authorized to call upon a probation officer for any additional  
39 investigation or verification of the petitioner's conduct since the completion of any  
40 sentence received for the nonviolent misdemeanor or nonviolent felony.

41       If the court, after hearing, finds that the petitioner has not been previously granted an  
42 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-  
43 145.4, the petitioner has no other felony or misdemeanor convictions, other than a traffic  
44 violation, the petitioner has no outstanding restitution orders or civil judgments  
45 representing amounts ordered for restitution entered against the petitioner, and the  
46 petitioner was convicted of an offense eligible for expunction under this section and was

1 convicted of, and completed any sentence received for, the nonviolent misdemeanor or  
2 nonviolent felony at least 15 years prior to the filing of the petition, it shall order that  
3 such person be restored, in the contemplation of the law, to the status the person occupied  
4 before such arrest or indictment or information.

5 (d) No person as to whom an order has been entered pursuant to subsection  
6 (c) of this section shall be held thereafter under any provision of any laws to be  
7 guilty of perjury or otherwise giving a false statement by reason of that person's  
8 failure to recite or acknowledge the arrest, indictment, information, trial, or  
9 conviction. Persons pursuing certification under the provisions of Chapter 17C or  
10 17E of the General Statutes, however, shall disclose any and all convictions to the  
11 certifying Commission regardless of whether or not the convictions were  
12 expunged pursuant to the provisions of this section.

13 Persons required by State law to obtain a criminal history record check on a  
14 prospective employee shall not be deemed to have knowledge of any convictions  
15 expunged under this section.

16 (e) The court shall also order that the conviction be expunged from the  
17 records of the court and direct all law enforcement agencies bearing record of the  
18 same to expunge their records of the conviction. The clerk shall notify State and  
19 local agencies of the court's order as provided in G.S. 15A-150.

20 (f) Any other applicable State or local government agency shall expunge  
21 from its records entries made as a result of the conviction ordered expunged under  
22 this section. The agency shall also reverse any administrative actions taken against  
23 a person whose record is expunged under this section as a result of the charges or  
24 convictions expunged. This subsection shall not apply to the Department of Justice  
25 for DNA records and samples stored in the State DNA Database and the State  
26 DNA Databank.

27 (g) A person who files a petition for expunction of a criminal record under  
28 this section must pay the clerk of superior court a fee of one hundred seventy-five  
29 dollars (\$175.00) at the time the petition is filed. Fees collected under this  
30 subsection shall be deposited in the General Fund. This subsection does not apply  
31 to petitions filed by an indigent."

32 **SECTION 2.** G.S. 15A-145.4 reads as rewritten:

33 **"§ 15A-145.4. Expunction of records for first offenders who are under 18**  
34 **years of age at the time of the commission of a nonviolent felony.**

35 (a) For purposes of this section, the term "nonviolent felony" means any  
36 felony except the following:

- 37 (1) A Class A through G felony.
- 38 (2) A felony that includes assault as an essential element of the  
39 offense.
- 40 (3) A felony that is an offense ~~for which the convicted offender must~~  
41 ~~register under requiring registration pursuant to Article 27A of~~  
42 ~~Chapter 14 of the General Statutes.~~ Statutes, whether or not the  
43 person is currently required to register.

- 1           ~~(4)~~ A felony that is an offense that did not require registration under  
2           Article 27A of Chapter 14 of the General Statutes at the time of  
3           the commission of the offense but does require registration on the  
4           date the petition to expunge the offense would be filed.  
5           ~~(5)~~(4) A felony charged for any of Any felony offense under the  
6           following sex-related or stalking offenses: G.S. 14-27.7A(b),  
7           ~~14-190.6, 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18,~~  
8           14-277.3, 14-277.3A, 14-321.1.  
9           ~~(6)~~(5) Any felony offense charged pursuant to in Chapter 90 of the  
10          General Statutes where the offense involves methamphetamines,  
11          heroin, or possession with intent to sell or deliver or sell and  
12          deliver cocaine.  
13          ~~(7)~~(6) A felony offense charged pursuant to under G.S. 14-12.12(b),  
14          14-12.13, or 14-12.14, or any felony offense charged as a  
15          felony for which punishment was determined pursuant to G.S.  
16          14-3(c).  
17          ~~(8)~~(7) A felony offense charged pursuant to under G.S. 14-401.16.  
18          ~~(9)~~(8) A Any felony offense in which a commercial motor vehicle was  
19          used in the commission of the offense.

20          (b) Notwithstanding any other provision of law, if the person is convicted  
21          of more than one nonviolent felony in the same session of court and none of the  
22          nonviolent felonies are alleged to have occurred after the person had already been  
23          ~~charged and arrested~~ served with criminal process for the commission of a  
24          nonviolent felony, then the multiple nonviolent felony convictions shall be treated  
25          as one nonviolent felony conviction under this section, and the expunction order  
26          issued under this section shall provide that the multiple nonviolent felony  
27          convictions shall be expunged from the person's record in accordance with this  
28          section.

29          (c) Whenever any person who had not yet attained the age of 18 years at the  
30          time of the commission of the offense and has not previously been convicted of  
31          any felony or misdemeanor other than a traffic violation under the laws of the  
32          United States or the laws of this State or any other state pleads guilty to or is guilty  
33          of a nonviolent felony, the person may file a petition in the court where the person  
34          was convicted for expunction of the nonviolent felony from the person's criminal  
35          record. The petition shall not be filed earlier than four years after the date of the  
36          conviction or when any active sentence, period of probation, and post-release  
37          supervision has been served, whichever occurs later. The person shall also perform  
38          at least 100 hours of community service, preferably related to the conviction,  
39          before filing a petition for expunction under this section. The petition shall contain  
40          the following:

- 41                  (1) An affidavit by the petitioner that the petitioner has been of good  
42                  moral character since the date of conviction of the nonviolent  
43                  felony in question and has not been convicted of any other felony

- 1 or any misdemeanor other than a traffic violation under the laws
- 2 of the United States or the laws of this State or any other state.
- 3 (2) Verified affidavits of two persons who are not related to the
- 4 petitioner or to each other by blood or marriage, that they know
- 5 the character and reputation of the petitioner in the community in
- 6 which the petitioner lives and that the petitioner's character and
- 7 reputation are good.
- 8 (3) A statement that the petition is a motion in the cause in the case
- 9 wherein the petitioner was convicted.
- 10 (4) An application on a form approved by the Administrative Office
- 11 of the Courts requesting and authorizing (i) a State and national
- 12 criminal history record check by the Department of Justice using
- 13 any information required by the Administrative Office of the
- 14 Courts to identify the individual; (ii) a search by the Department
- 15 of Justice for any outstanding warrants or pending criminal cases;
- 16 and (iii) a search of the confidential record of expunctions
- 17 maintained by the Administrative Office of the Courts. The
- 18 application shall be forwarded to the Department of Justice and
- 19 to the Administrative Office of the Courts, which shall conduct
- 20 the searches and report their findings to the court.
- 21 (5) An affidavit by the petitioner that no restitution orders or civil
- 22 judgments representing amounts ordered for restitution entered
- 23 against the petitioner are outstanding.
- 24 (6) An affidavit by the petitioner that the petitioner has performed at
- 25 least 100 hours of community service since the conviction for the
- 26 nonviolent felony. The affidavit shall include a list of the
- 27 community services performed, a list of the recipients of the
- 28 services, and a detailed description of those services.
- 29 (7) An affidavit by the petitioner that the petitioner possesses a high
- 30 school diploma, a high school graduation equivalency certificate,
- 31 or a General Education Development degree.

32 The petition shall be served upon the district attorney of the court wherein the  
33 case was tried resulting in conviction. The district attorney shall have 30 days  
34 thereafter in which to file any objection thereto and shall be duly notified as to the  
35 date of the hearing of the petition. The district attorney shall make his or her best  
36 efforts to contact the victim, if any, to notify the victim of the request for  
37 expunction prior to the date of the hearing.

38 (d) The court in which the petition was filed shall take the following steps  
39 and shall consider the following issues in rendering a decision upon a petition for  
40 expunction of records of a nonviolent felony under this section:

- 41 (1) Call upon a probation officer for additional investigation or
- 42 verification of the petitioner's conduct during the four-year

- 1 period since the date of conviction of the nonviolent felony in  
2 question.
- 3 (2) Review the petitioner's juvenile record, ensuring that the  
4 petitioner's juvenile records remain separate from adult records  
5 and files and are withheld from public inspection as provided  
6 under Article 30 of Chapter 7B of the General Statutes.
- 7 (3) Review the amount of restitution made by the petitioner to the  
8 victim of the nonviolent felony to be expunged and give  
9 consideration to whether or not restitution was paid in full.
- 10 (4) Review any other information the court deems relevant,  
11 including, but not limited to, affidavits or other testimony  
12 provided by law enforcement officers, district attorneys, and  
13 victims of nonviolent felonies committed by the petitioner.
- 14 (e) The court may order that the person be restored, in the contemplation of  
15 the law, to the status the person occupied before the arrest or indictment or  
16 information if the court finds all of the following after a hearing:
- 17 (1) The petitioner has remained of good moral character and has  
18 been free of conviction of any felony or misdemeanor, other than  
19 a traffic violation, for four years from the date of conviction of  
20 the nonviolent felony in question or any active sentence, period  
21 of probation, or post-release supervision has been served,  
22 whichever is later.
- 23 (2) The petitioner has not previously been convicted of any felony or  
24 misdemeanor other than a traffic violation under the laws of the  
25 United States or the laws of this State or any other state.
- 26 (3) The petitioner has no outstanding warrants or pending criminal  
27 cases.
- 28 (4) The petitioner has no outstanding restitution orders or civil  
29 judgments representing amounts ordered for restitution entered  
30 against the petitioner.
- 31 (5) The petitioner was less than 18 years old at the time of the  
32 commission of the offense in question.
- 33 (6) The petitioner has performed at least 100 hours of community  
34 service since the time of the conviction and possesses a high  
35 school diploma, a high school graduation equivalency certificate,  
36 or a General Education Development degree.
- 37 (7) The search of the confidential records of expunctions conducted  
38 by the Administrative Office of the Courts shows that the  
39 petitioner has not been previously granted an expunction.
- 40 (f) No person as to whom an order has been entered pursuant to subsection  
41 (e) of this section shall be held thereafter under any provision of any laws to be  
42 guilty of perjury or otherwise giving a false statement by reason of that person's  
43 failure to recite or acknowledge the arrest, indictment, information, trial, or



1 conviction. Persons pursuing certification under the provisions of Chapter 17C or  
2 17E of the General Statutes, however, shall disclose any and all felony convictions  
3 to the certifying Commission regardless of whether or not the felony convictions  
4 were expunged pursuant to the provisions of this section.

5 Persons required by State law to obtain a criminal history record check on a  
6 prospective employee shall not be deemed to have knowledge of any convictions  
7 expunged under this section.

8 (g) The court shall also order that the nonviolent felony conviction be  
9 expunged from the records of the court and direct all law enforcement agencies  
10 bearing record of the same to expunge their records of the conviction. The clerk  
11 shall notify State and local agencies of the court's order as provided in G.S.  
12 15A-150.

13 (h) Any other applicable State or local government agency shall expunge  
14 from its records entries made as a result of the conviction ordered expunged under  
15 this section. The agency shall also reverse any administrative actions taken against  
16 a person whose record is expunged under this section as a result of the charges or  
17 convictions expunged. This subsection shall not apply to the Department of Justice  
18 for DNA records and samples stored in the State DNA Database and the State  
19 DNA Databank.

20 (i) Any person eligible for expunction of a criminal record under this  
21 section shall be notified about the provisions of this section by the probation  
22 officer assigned to that person. If no probation officer is assigned, notification of  
23 the provisions of this section shall be provided by the court at the time of the  
24 conviction of the felony which is to be expunged under this section."

25 **SECTION 3.** G.S. 15A-145(d1) is repealed.

26 **SECTION 4.** G.S. 15A-146 reads as rewritten:

27 **"§ 15A-146. Expunction of records when charges are dismissed or there are**  
28 **findings of not guilty.**

29 (a) If any person is charged with a crime, either a misdemeanor or a felony,  
30 or was charged with an infraction under G.S. 18B-302(i) prior to December 1,  
31 1999, and the charge is dismissed, or a finding of not guilty or not responsible is  
32 entered, that person may apply to the court of the county where the charge was  
33 brought for an order to expunge from all official records any entries relating to his  
34 apprehension or trial. The court shall hold a hearing on the application and, upon  
35 finding that the person had not previously received an expungement under this  
36 section, G.S. 15A-145, G.S. 15A-145.1, 15A-145.2, ~~or 15A-145.3, 15A-145.3,~~  
37 15A-145.4, or 15A-145.5, and that the person had not previously been convicted  
38 of any felony under the laws of the United States, this State, or any other state, the  
39 court shall order the expunction. No person as to whom such an order has been  
40 entered shall be held thereafter under any provision of any law to be guilty of  
41 perjury, or to be guilty of otherwise giving a false statement or response to any  
42 inquiry made for any purpose, by reason of his failure to recite or acknowledge  
43 any expunged entries concerning apprehension or trial.

1 (a1) Notwithstanding subsection (a) of this section, if a person is charged  
2 with multiple offenses and all the charges are dismissed, or findings of not guilty  
3 or not responsible are made, then a person may apply to have each of those  
4 charges expunged if the offenses occurred within the same 12-month period of  
5 time or if the charges are dismissed or findings are made at the same term of court.  
6 Unless circumstances otherwise clearly provide, the phrase "term of court" shall  
7 mean one week for superior court and one day for district court. There is no  
8 requirement that the multiple offenses arise out of the same transaction or  
9 occurrence or that the multiple offenses were consolidated for judgment. The court  
10 shall hold a hearing on the application. If the court finds (i) that the person had not  
11 previously received an expungement under this subsection, or that any previous  
12 expungement received under this subsection occurred prior to October 1, 2005 and  
13 was for an offense that occurred within the same 12-month period of time, or was  
14 dismissed or findings made at the same term of court, as the offenses that are the  
15 subject of the current application, (ii) that the person had not previously received  
16 an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, ~~or 15A-145.3, 15A-~~  
17 145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not previously been  
18 convicted of any felony under the laws of the United States, this State, or any  
19 other state, the court shall order the expunction. No person as to whom such an  
20 order has been entered shall be held thereafter under any provision of any law to  
21 be guilty of perjury, or to be guilty of otherwise giving a false statement or  
22 response to any inquiry made for any purpose, by reason of his failure to recite or  
23 acknowledge any expunged entries concerning apprehension or trial.

24 (b) The court may also order that the said entries, including civil  
25 revocations of drivers licenses as a result of the underlying charge, shall be  
26 expunged from the records of the court, and direct all law-enforcement agencies,  
27 the Division of Adult Correction of the Department of Public Safety, the Division  
28 of Motor Vehicles, and any other State or local government agencies identified by  
29 the petitioner as bearing record of the same to expunge their records of the entries,  
30 including civil revocations of drivers licenses as a result of the underlying charge  
31 being expunged. This subsection does not apply to civil or criminal charges based  
32 upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk  
33 shall notify State and local agencies of the court's order as provided in G.S.  
34 15A-150. The clerk shall forward a certified copy of the order to the Division of  
35 Motor Vehicles for the expunction of a civil revocation provided the underlying  
36 criminal charge is also expunged. The civil revocation of a drivers license shall not  
37 be expunged prior to a final disposition of any pending civil or criminal charge  
38 based upon the civil revocation. The costs of expunging the records, as required  
39 under G.S. 15A-150, shall not be taxed against the petitioner.

40 (b1) Any person entitled to expungement under this section may also apply  
41 to the court for an order expunging DNA records when the person's case has been  
42 dismissed by the trial court and the person's DNA record or profile has been  
43 included in the State DNA Database and the person's DNA sample is stored in the

1 State DNA Databank. A copy of the application for expungement of the DNA  
2 record or DNA sample shall be served on the district attorney for the judicial  
3 district in which the felony charges were brought not less than 20 days prior to the  
4 date of the hearing on the application. If the application for expungement is  
5 granted, a certified copy of the trial court's order dismissing the charges shall be  
6 attached to an order of expungement. The order of expungement shall include the  
7 name and address of the defendant and the defendant's attorney and shall direct the  
8 SBI to send a letter documenting expungement as required by subsection (b2) of  
9 this section.

10 (b2) Upon receiving an order of expungement entered pursuant to subsection  
11 (b1) of this section, the SBI shall purge the DNA record and all other identifying  
12 information from the State DNA Database and the DNA sample stored in the State  
13 DNA Databank covered by the order, except that the order shall not apply to other  
14 offenses committed by the individual that qualify for inclusion in the State DNA  
15 Database and the State DNA Databank. A letter documenting expungement of the  
16 DNA record and destruction of the DNA sample shall be sent by the SBI to the  
17 defendant and the defendant's attorney at the address specified by the court in the  
18 order of expungement.

19 (c) The clerk shall notify State and local agencies of the court's order as  
20 provided in G.S. 15A-150."

21 **SECTION 5.** G.S. 15A-151(a) reads as rewritten:

22 **"§ 15A-151. Confidential agency files; exceptions to expunction.**

23 (a) The Administrative Office of the Courts shall maintain a confidential file  
24 containing the names of those people for whom it received a notice under G.S. 15A-150.  
25 The information contained in the file may be disclosed only as follows:

- 26 (1) To a judge of the General Court of Justice of North Carolina for the  
27 purpose of ascertaining whether a person charged with an offense has  
28 been previously granted a discharge or an expunction.
- 29 (2) To a person requesting confirmation of the person's own discharge or  
30 expunction, as provided in G.S. 15A-152.
- 31 (3) To the General Court of Justice of North Carolina in response to a  
32 subpoena or other court order issued pursuant to a civil action under  
33 G.S. 15A-152.
- 34 (4) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~  
35 G.S. 15A-145.4 or G.S. 15A-145.5, to State and local law enforcement  
36 agencies for employment purposes only.
- 37 (5) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~  
38 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Criminal  
39 Justice Education and Training Standards Commission for certification  
40 purposes only.
- 41 (6) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~  
42 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Sheriffs'  
43 Education and Training Standards Commission for certification  
44 purposes only."

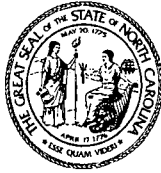
45 **SECTION 6.** G.S. 17C-13(b) reads as rewritten:

1       "(b) Notwithstanding ~~G.S. 15A-145.4~~, G.S. 15A-145.4 or G.S. 15A-145.5,  
2 the Commission may gain access to a person's felony conviction records, including  
3 those maintained by the Administrative Office of the Courts in its confidential  
4 files containing the names of persons granted expunctions. The Commission may  
5 deny, suspend, or revoke a person's certification based solely on that person's  
6 felony conviction, whether or not that conviction was expunged."

7       **SECTION 7.** G.S. 17E-12 reads as rewritten:

8       "(b) Notwithstanding ~~G.S. 15A-145.4~~, G.S. 15A-145.4 or G.S. 15A-145.5,  
9 the Commission may gain access to a person's felony conviction records, including  
10 those maintained by the Administrative Office of the Courts in its confidential  
11 files containing the names of persons granted expunctions. The Commission may  
12 deny, suspend, or revoke a person's certification based solely on that person's  
13 felony conviction, whether or not that conviction was expunged."

14       **SECTION 8.** Sections 2, 3, and 4 of this act become effective  
15 December 1, 2012, and apply to petitions filed on or after that date, but petitions  
16 filed prior to that date are not abated by this act. The remainder of this act  
17 becomes effective December 1, 2012.  
18



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O. Walker Reagan  
Director

**TO:** Members of the LRC Committee on Criminal Record Expunctions  
**FROM:** Brenda Carter and Susan Sitze, Committee Co-Counsel  
**RE:** Summary of North Carolina Law Concerning the Expunction of Criminal Records

In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction and a person may generally be granted only one expungement in his or her lifetime. Provisions for the expunction of criminal records are set out in Article 5, Chapter 15A of the General Statutes. This memorandum contains a brief overview of the circumstances under which expunction is authorized in this State.

**Expunction When Charges Dismissed/Not Guilty**

- ***Charges Dismissed Or Person Found Not Guilty*** - G.S. 15A-146 provides for the expunction of records when charges are dismissed or there is a finding of not guilty. A person charged with any crime, whether a misdemeanor or a felony, who is not convicted of that offense, can apply to have the charge expunged. *Persons who have previously received an expungement under this or other specified provisions, or persons who have previously been convicted of a felony would not qualify under this provision.*
- ***Charges Dismissed Or Person Found Not Guilty As A Result Of Identity Fraud*** - G.S. 15A-147 provides for the expunction of records when a charge is dismissed or there is a finding of not guilty in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged. *There is no limit to the number of times a person who is the victim of identity fraud can qualify for an expungement under this provision.*
- ***Charges Dismissed Or Person Found Not Guilty Of Certain Drug-Related Offenses Committed While Not Over The Age Of 21*** - G.S. 15A-145.2(b) provides for the expunction of records when a person is charged with misdemeanor possession of a controlled substance or possession of less than 1 gram of cocaine\*, and the charges are subsequently dismissed or there is a finding of not guilty. *An order of expunction must be entered if the court determines that the person was not over 21 at the time of the offense for which the person was charged.* A similar provision is contained in G.S. 15A-145.3(b) with regard to misdemeanor violations of the Toxic Vapors Act and possession of drug paraphernalia. *\*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*
- ***Pardon of Innocence*** – G.S. 15A-149 provides for the expunction of records when a person has been granted a pardon of innocence by the Governor.

**Expunction When the Offender Was Under a Specified Age at the Time of the Offense**

- **Juvenile Records** - G.S. 7B-3200 provides for a person to petition for the expunction of records relating to the person's having been adjudicated delinquent or undisciplined while a minor. *This provision does not allow the expunction of records relating to an offense that would have been a Class A-E felony if committed by an adult.* The statute also provides for expunction of juvenile records when a juvenile petition was dismissed without adjudication.
- **Convictions of Misdemeanor Committed While under the Age of 18** - G.S. 15A-145 provides for the expunction of records for first offenders convicted of a misdemeanor committed while under the age of 18. *A person who is convicted of a misdemeanor committed prior to reaching the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions within that time period.*
- **Misdemeanor Possession of Alcohol Committed While under the Age of 21** - G.S. 15A-145 also provides for the expunction of records for first offenders convicted of misdemeanor possession of alcohol who were under the age of 21 at the time the offense was committed. *A person who is convicted of misdemeanor possession of alcohol committed while under the age of 21 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Misdemeanor Cyberbullying Committed While under the Age of 18** – G.S. 14-458.1(c) provides for the conditional discharge and dismissal of a misdemeanor cyberbullying offense committed while under the age of 18 and provides that expunction may be obtained pursuant to G.S. 15A-146. *(See Charges Dismissed or Person Found Not Guilty above)*
- **Certain Gang Offenses Committed While under the Age of 18** – G.S. 15A-145.1 provides for the expunction of records for first offenders who are either: (i) convicted of, or (ii) discharged and dismissed, for certain gang offenses, when the offense was committed while the offender was under the age of 18. *A person who is convicted of, or discharged and dismissed for, one of these offenses committed while under the age of 18 may have that conviction expunged after 2 years, provided the person has completed any term of probation and assuming there have been no other convictions in that time period.*
- **Nonviolent Felonies Committed While under the Age of 18 – (Effective December 1, 2011)** G.S. 15A-145.4 (as enacted in Senate Bill 397, Session Law 2011-278) provides for the expunction of records for first offenders who are convicted of a Class H or Class I felony committed while the offender was under the age of 18. The provision does not apply to any felony that includes assault as an essential element of the offense, or to any offense that requires the person to register as a sex offender or that is otherwise specifically excluded. *A person who is convicted of an eligible felony offense committed while under the age of 18 may have that conviction expunged after 4 years, provided the person has completed any active sentence, period of probation, and post-release supervision, and there have been no other convictions in that time period. A petitioner seeking expunction under this provision must possess a high school diploma, a high school*

## Appendix E – Expunction in North Carolina

*graduation equivalency certificate, or a GED, and must have completed at least 100 hours of community service since the conviction.*

- ***Conditional Discharge and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(a) and G.S. 15A-145.3(a) authorize the expunction of records for offenses discharged and dismissed pursuant to G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). These conditional discharges and dismissals are for first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. When such person pleads guilty to or is found guilty of misdemeanor drug possession, possession of less than one gram of cocaine\*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place the offender on probation under certain conditions. *Discharge and dismissal under this provision may occur only once with respect to any person. \*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*
- ***Cancellation and Expunction for First-time Drug Offenders Not Over Age 21*** – G.S. 15A-145.2(c) and G.S. 15A-145.3(c) apply to first offenders who were not over the age of 21 at the time the offense was committed, and who have not previously been convicted of any offense under North Carolina's Controlled Substances Act, Toxic Vapors Act, or Drug Paraphernalia Act, or under corresponding federal law or the laws of another state. No sooner than 12 months after conviction, the person may apply to the court to have a conviction of misdemeanor drug possession, possession of less than one gram of cocaine\*, possessing drug paraphernalia, or inhaling or possessing any substance having the property of releasing toxic vapors or fumes, cancelled and records of that conviction expunged. *Cancellation and expunction under this provision may occur only once with respect to any person. \*Note: Effective 12-1-11 this provision applies to both misdemeanor and felony drug possession.*

### **Expunction of Larceny Conviction after 15 Years Have Elapsed From Date of Conviction**

- ***Misdemeanor Larceny*** – G.S. 15A-145(d1) provides for the expunction of a misdemeanor conviction of misdemeanor larceny pursuant to G.S. 14-72(a) if the person has no felony convictions, it has been at least 15 years since the conviction for misdemeanor larceny, and the person has had no felony or misdemeanor convictions during that 15 year period.

Appendix E – Expunction in North Carolina

EXPUNCTION OF CRIMINAL RECORDS IN NORTH CAROLINA

| CITATION  | ELIGIBLE OFFENSES  | WAITING PERIOD | STIPULATIONS   |
|---|--|----------------|--|
| G.S. 15A-146<br><br><b>Charges Dismissed or there is a finding of Not Guilty</b>                              | Misdemeanor or felony.<br><br>Infraction under G.S. 18B-302(i) [purchase or possession of malt beverages or unfortified wine, or consumption of any alcoholic beverage, by a person 19 or 20 years old] prior to December 1, 1999.   | None           | Charges dismissed or finding of not guilty for offense.<br><br>Not applicable if person has had previous expungement* of any kind or has a felony conviction.<br><br><i>*Unless the previous expungement was prior to October 1, 2005 and was for an offense that occurred within the same 12-month period or was dismissed in the same term of court as the offense(s) for which the current expungement is sought.</i> |
| G.S. 15A-147<br><br><b>Charges Dismissed or there is a finding of Not Guilty, as Result of Identity Theft</b> | Infraction, misdemeanor or felony  | None           | Charges brought as result of identity theft and charges dismissed, finding of not guilty, or conviction is set aside.<br>No costs taxed against petitioner.  |
| G.S. 15A-145.2(b)<br>G.S. 15A-145.3(b)<br><br><b>Charges Dismissed Certain Drug Offenses/Toxic Vapors Act</b> | --Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br>--Felony possession of less than 1 gram of cocaine.*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance. (HB 642, Session Law 2011-192)</i> | None           | Charges dismissed or finding of not guilty.<br><br>Person must be 21 or under at time of offense.  |



# Appendix E – Expunction in North Carolina

| CITATION  | ELIGIBLE OFFENSES  | WAITING PERIOD   | STIPULATIONS   |
|---|--|--|--|
| G.S. 15A-149<br><b>Pardon of Innocence</b>  | Any offense  | None   | Petitioner has received pardon of innocence from the Governor  |
| G.S. 7B-3200(h)<br><b>Juvenile Records</b><br>Alleged Delinquent/Undisciplined            | Any allegation of juvenile delinquency.  | Petitioner is 16 years or older.   | Delinquency alleged, but juvenile petition dismissed.  |
|   | Any allegation of undisciplined juvenile.  | Petitioner is 18 years or older.   | Undisciplined alleged, but juvenile petition dismissed.  |
|   | Any adjudication of undisciplined.   | Petitioner is 18 years or older.   |  |
| G.S. 7B-3200(a),(b)<br><b>Juvenile Records</b><br>Adjudicated<br>Delinquent/Undisciplined | Any adjudication of delinquency for a misdemeanor or Class F-I felony.   | For delinquency, at least 18 months after release from juvenile court jurisdiction.  | Petitioner has had no subsequent delinquent adjudications or convictions of a misdemeanor or felony as an adult.   |
| G.S. 15A-145<br><b>First Offender Under 18</b><br>(Age 21 for certain alcohol offenses)   | Misdemeanor  | Whichever of the following is later:<br>• 2 years after the date of conviction;<br>• Completion of any period of probation,  | No other convictions, and<br>Petitioner must have been:<br>• Under 18 at the time of the offense; or<br>• If offense is misdemeanor possession of alcohol in violation of G.S. 18B-302(b)(1), petitioner must have been under 21 at the time of the offense. |
| G.S. 15A-145.1 and G.S. 14-50.29<br><b>Certain Gang Offenses</b>                          | Class H felony under Street Gang Suppression Act<br><br>Enhanced offense under G.S. 14-50.22 (enhances any criminal offense by one class if done as part of gang activity) | After discharge and dismissal ; or<br>For convictions, whichever of the following is later:<br>• 2 years after the date of conviction;<br>• Completion of any period of probation. | Petitioner must have been under 18 at the time of the offense.<br><br>Petitioner has no prior misdemeanor or felony convictions.   |

# Appendix E – Expunction in North Carolina

| CITATION  | ELIGIBLE OFFENSES   | WAITING PERIOD   | STIPULATIONS  |
|---|---|--|---|
| G.S. 14-458.1(c)<br><b>Cyberbullying</b>  | Cyberbullying by person under the age of 18 years.  | Upon discharge and dismissal.  | Petitioner must have been under 18 at the time of the offense.<br><br>Expunction is pursuant to G.S. 15A-146.   |
| G.S. 15A-145.2(a)<br>G.S. 15A-145.3(a)<br><b>First-time drug offenders</b><br>(Discharge & Dismissal) | Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br><br>Felony possession of less than 1 gram of cocaine.*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i> | Upon discharge and dismissal under G.S. 90-96(a) or (a1) or G.S. 90-113.14(a) or (a1). | Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior discharge and dismissal under this statute. |
| G.S. 15A-145.2(c)<br>G.S. 15A-145.3(c)<br><b>First-time drug offenders</b><br>(Convicted)             | Misdemeanor possession of a controlled substance, violation of the toxic vapors act, or possession of drug paraphernalia.<br>Felony possession of less than 1 gram of cocaine*<br><i>*Effective 12-1-11, includes felony possession of any controlled substance (HB 642, Session Law 2011-192)</i>      | No sooner than 12 months after conviction.   | Petitioner must have been under 21 at the time of the offense and must have no prior convictions and no prior expunctions under this statute.             |
| G.S. 15A-145(d1)<br><b>Misdemeanor Larceny</b>  | Misdemeanor larceny pursuant to G.S. 14-72(a); value of goods \$1,000 or less.  | 15 years from date of conviction.  | Petitioner must have no felony convictions; and no misdemeanor convictions in the 15 years prior to petition for expunction.                              |

# Appendix E – Expunction in North Carolina

| CITATION   | ELIGIBLE OFFENSES  | WAITING PERIOD                            | STIPULATIONS  |
|--|--|---|---|
| <p>G.S. 15A-145.4<br/> <i>(as enacted in Senate Bill 397,<br/> Session Law 2011-278 and<br/> effective December 1, 2011)</i></p> <p><b>Nonviolent Felony</b></p> | <p>Class H or Class I felony that does not include assault as an essential element of the offense, does not require the offender to register as a sex offender, or is otherwise specifically excluded.</p> | <p>Four years from date of conviction</p> | <p>Petitioner must have been under 18 at the time of the offense.</p> <p>Petitioner must possess a high school diploma, graduation equivalency certificate, or a GED; and must have completed at least 100 hours of community service since the conviction.</p> |

Chart Prepared by: Brenda Carter & Susan Sitze, Staff Attorneys  
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