



2023 EXPUNCTIONS REPORT

G.S. 15A-160

PREPARED BY
NORTH CAROLINA ADMINISTRATIVE OFFICE OF THE COURTS
SEPTEMBER 1, 2023



About the North Carolina Judicial Branch

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

About the North Carolina Administrative Office of the Courts

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

INTRODUCTION

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

§ 15A-160. Reporting requirement.

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

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

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

ANALYSIS

Overview of the Petition and Order Expunction Process

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

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

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

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



Overview of the Automated Expunction Process

On June 25, 2020, the Governor signed S.L. 2020-35, the Second Chance Act. Section 3 of S.L. 2020-35 expanded the expunction of nonconviction records. Between December 1, 2021 and July 31, 2022, any misdemeanor, felony, or infraction resulting in a dismissal, or a finding of not guilty or not responsible, was expunged “by operation of law,” if the disposition date was on or after December 1, 2021 but on or before July 31, 2022, and all charges in the case were dismissed without leave, dismissed by the court, or result in a finding of not guilty or not responsible. No case was expunged if it included a felony charge dismissed pursuant to a plea agreement.

Pursuant to N.C.G.S. 15A-146(a4), these cases were not expunged via a petition and an order, but rather through an automated program that deleted eligible cases nightly out of the case index in the Automated Criminal/Infractions System (ACIS) based on dispositions entered by clerks of superior court. Corresponding case information in paper files were then manually destroyed by clerks.

Pursuant to Section 1.(a) of SL 2022-47, effective August 1, 2022, the automated expunction of cases under G.S. 15A-146(a4) was suspended. Pursuant to Section 14.5 of SL 2023-103, the suspension of automated expunctions will remain in effect until July 1, 2024, unless a different end date is set by subsequent legislation.

Number and Type of Expunctions

For FY 2022-2023, North Carolina state courts issued 78,473 expunctions. Table 1 below details the number of expunctions for FY 2022-2023 and the preceding four fiscal years, categorized by the statute under which the expunction was granted.

Table 1: Expunctions for Fiscal Years 2018-19 through 2022-2023

Statute	2018-19	2019-20	2020-21	2021-22	2022-23	Total
15A-145	0	0	2	0	0	2
15A-145(A)	137	73	50	45	22	327
15A-145.1	1	0	0	0	0	1
15A-145.2	5	4	0	7	8	24
15A-145.2(A)	47	32	32	15	5	131
15A-145.2(B)	64	29	24	7	3	127
15A-145.2(C)	40	27	42	20	22	151
15A-145.3	1	0	0	0	0	1
15A-145.3(A)	1	0	0	0	0	1
15A-145.3(B)	30	13	11	1	0	55
15A-145.3(C)	2	0	0	2	0	4
15A-145.4	25	19	9	16	10	79
15A-145.5	1,057	802	1,022	1,627	3,752	8,260



15A-145.6	4	3	0	2	3	12
15A-145.7	1	0	1	1	0	3
15A-145.8(A)	0	0	24	24	17	65
15A-145.8(B)	0	0	1	14	6	21
15A-145.8A	0	0	234	8,612	1,428	10,274
15A-145.9	0	0	2	4	0	6
15A-146	49	10	94	4	3	160
15A-146(A/A1)	12,236	10,598	13,194	15,017	16,353	67,398
15A-146(A2)	537	449	542	750	477	2,755
15A-146(A4)	0	0	0	395,055	55,908	450,963
15A-147	2	0	1	0	6	9
15A-147(A)	18	11	16	11	1	57
15A-147(A1)	1,288	1,450	1,087	690	449	4,964
15A-148	0	0	1	0	0	1
15A-149	0	0	1	1	0	2
Total	15,545	13,520	16,390	421,925	78,473	545,853

Receipts Generated from Expunction Fees

Section 29A.5(b) of S.L. 2002-126 imposed a \$65.00 fee on persons who file a petition for expunction of a criminal record pursuant to 15A-145, which was later increased to \$125.00 by S.L. 2005-276. Section 1 of S.L. 2012-191 amended expunction statutes to impose a fee of \$175.00 on persons who file a petition for expunction of a criminal record pursuant to G.S. 15A-145.5. Section 18B.16 of S.L. 2013-360 amended several expunction statutes (G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, and 15A-146), to impose, or increase, the fee to \$175.00 fee on persons who file a petition for expunction of a criminal record on or after September 1, 2013.¹ This session law also authorized the use of up to \$1.4 million to create and support up to five new SBI staff positions to help process petitions for expunction and conduct criminal record checks required for those petitions. Session laws 2018-72 and 2020-35 further amended expunction statutes to impose a \$175.00 fee on persons who file a petition for expunction of a criminal record pursuant to G.S. 15A-145.7 and G.S. 15A-145.8A, respectively.

The \$175.00 fee is deposited in the General Fund, with \$122.50 of the fee remitted to DPS for the costs of criminal record checks performed in connection with processing petitions for expunctions and \$52.50 retained by NCAOC to pay the costs of processing petitions for expunctions.²

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

² The entire \$175.00 fee for petitions filed under G.S. 15A-145.5 is remitted to the General Fund and is not apportioned between NCDPS and NCAOC.



From July 1, 2022 through June 30, 2023, NCAOC collected and disbursed a total of \$514,499.50 from expunction fees applied toward the General Fund.³ Of that total, NCAOC retained \$152,400.00 and remitted \$351,209.50 to DPS pursuant to G.S. 7A-321(d).⁴ The remaining \$10,890 is the expunction fees petitioned under G.S. 15A-145.5 in Odyssey pilot counties since its February 2023 inception, which are remitted to the General Fund in their entirety.

Of the funds remitted to DPS during FY 2022-23, the SBI spent \$399,528.19 on expunction payroll and operational expenses and with no reverted funds to the General Fund. The remitted funds support receipt-supported positions in the SBI.

Of the funds remitted to NCAOC during FY 2022-2023, NCAOC spent \$234,847 on expunction payroll and administrative support expenses. Pursuant to G.S. 143C-1-2(b), the remaining balance of \$46,817 was approved as a legislative carryforward for FY 2022-2023.⁵

SUMMARY

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

³ NCAOC's legacy Financial Management System is unable to capture the expunction fees collected pursuant to G.S. 15A-145.5, which are deposited into a larger General Court of Justice account for remittance to the General Fund, thus, the \$514,499.50 total is likely an undercount. However, with the new Integrated Case Management System (Odyssey), this data (4.5 months of 4 pilot counties) is captured, but will not represent the entire state until Odyssey is fully implemented in all 100 counties.

⁴ NCAOC's Expunction Program shows receipts of \$152,025, resulting in a variance of \$375. The variance between NCAOC disbursements and the receipts in the program is due to the posting of some receipts into the General Fund program after the end of the 2022-23 fiscal year.

⁵ NCAOC had an approved Legislative Carryforward of \$129,849.42 from FY 2021-22 which is shown as a revenue line in the BD701 Report.



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