



# SENATE BILL 445: Expungement Process Modifications.

2017-2018 General Assembly

<b>Committee:</b>		<b>Date:</b>	September 6, 2017
<b>Introduced by:</b>		<b>Prepared by:</b>	Susan Sitze
<b>Analysis of:</b>	S.L. 2017-195		Staff Attorney

**OVERVIEW:** *Effective December 1, 2017, S.L. 2017-195 makes modifications to the various expunction statutes as follows:*

- *Standardizes the filing procedures for expunction.*
- *Authorizes prosecutors to access certain records of expunction.*
- *Allows certain expunged criminal acts to be considered in calculating prior record levels during sentencing for subsequent offenses if the expunction is granted on or after July 1, 2018.*
- *Reduces the waiting period for certain types of expunctions.*
- *Makes other modifications to the expunction process.*

**CURRENT LAW:** 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 a person is restored to the status the person 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 except for limited exceptions, a person may generally be granted only one expunction in his or her lifetime.

The qualified person may file a Petition for Expunction with the court where convicted. Depending on the type of conviction, the petition has various requirements under the specific statute for that conviction, generally including an application for a criminal background check, an affidavit by the petitioner of good behavior, and verified affidavits by two unrelated people of the petitioner's character and reputation. The application for a criminal background check must be on an Administrative Office of the Courts (AOC) approved form. The application is sent to the Department of Public Safety and the AOC for name-based State and national criminal record searches. The petition is also sent to the district attorney's office which can register any objection they may have to the petition. If, after a hearing, the court determines the petition has met all the requirements, then the court orders the matter be expunged from the records of the court and all law enforcement agencies are directed to do the same.

**BILL ANALYSIS:** S.L. 2017-195 makes the following changes to the various statutes authorizing expunction:

- Establishes a uniform procedure for filing a petition for expunction requiring the application for a criminal background check to be filed with the clerk of superior court in the county of conviction. The clerk will then forward the application to the Department of Public Safety and the AOC.

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# Senate Bill 445

Page 2

- Reduces the waiting period to expunge a first-time nonviolent felony from 15 years to 10 years and the waiting period for a nonviolent misdemeanor to 5 years.
- For expunction of charges that are dismissed or charges that are disposed of by findings of not guilty or not responsible, the act makes the following changes:
  - Eliminates the requirement that the offenses must have all occurred within a 12 month period.
  - Removes language that made the receipt of a previous expunction a disqualifier for obtaining an expunction.
- Requires any petition for expunction to be on an AOC approved form.
- Requires the AOC to add the petitions sent by the county clerks to the confidential file they currently maintain containing the names of those persons granted expunction, which may only be disclosed as provided by statute.
- Provides all prosecutors electronic access to the confidential AOC file for any expungement granted on or after July 1, 2018, for the following expungements:
  - First offenders under the age of 18 at the time of conviction of misdemeanor; certain other misdemeanors. G.S. 15A-145.
  - First offenders under the age of 18 at the time of conviction of certain gang offenses. G.S. 15A-145.1.
  - First offenders not over 21 years of age at the time of the offense of certain drug offenses. G.S. 15A-145.2.
  - First offenders not over 21 years of age at the time of the offense of certain toxic vapors offenses. G.S. 15A-145.3.
  - First offenders who are under 18 years of age at the time of the commission of a nonviolent felony. G.S. 15A-145.4.
  - Certain misdemeanors and felonies – no age limitation. G.S. 15A-145.5.
  - Certain defendants convicted of prostitution. G.S. 15A-145.6.
  - Dismissed charges. G.S. 15A-146(a) and (a1).

Prosecutors would not have access to the record of the following expungements:

- Charges for which the person was found not guilty or not responsible. G.S. 15A-146(a2).
  - Dismissed charges or findings of not guilty as a result of identity theft or mistaken identity. G.S. 15A-147.
  - Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted. G.S. 15A-148.
  - Expunction of records when a pardon of innocence is granted. G.S. 15A-149.
- The underlying criminal conviction that was expunged may be used to calculate prior record level at sentencing if the expunction is granted on or after July 1, 2018.

**EFFECTIVE DATE:** This act becomes effective December 1, 2017, and applies to petitions for expunction filed on or after that date.