



SENATE BILL 562: The Second Chance Act.

2019-2020 General Assembly

Committee:		Date:	November 6, 2020
Introduced by:		Prepared by:	Susan Sitze Staff Attorney
Analysis of:	S.L. 2020-35		

OVERVIEW: *S.L. 2020-35 makes various changes to the expunction statutes as follows:*

- *Provides for expunction of certain offenses committed prior to the effective date of "Raise the Age" legislation*
- *Amends prosecutor and law enforcement access to expunged files*
- *Streamlines expunctions for charges not resulting in conviction*
- *Modifies expunction of nonviolent misdemeanor and felony convictions*

This act has various effective dates, please see full summary for effective dates of specific provisions.

BILL ANALYSIS:

Section 1 enacts a new G.S. 15A-145.8 [*G.S. 15A-145.8A see editor's note*] to allow for the expunction of certain offenses committed prior to December 1, 2019 and while a person was less than 18 years of age but at least 16 years of age. Misdemeanors and Class H or I felonies can be expunged unless they were an offense involving impaired driving or an offense requiring registration as a sex offender.

This section is effective retroactively to December 1, 2019, and applies to offenses committed before that date. The Administrative Office of the Courts must develop and disseminate the forms required by this section no later than September 1, 2020.

Section 2.(a) amends G.S. 15A-151.5, which governs prosecutor access to records of expunged offenses to include the following types of expunctions as expunctions that can be accessed by prosecutors and that can be used in subsequent convictions for specific purposes:

- Expunctions granted under G.S. 15A-145.8 (as enacted in Section 1) [*G.S. 15A-145.8A see editor's note.*]
- G.S. 15A-145.7 (Expunctions granted for first offenders under 20 years of age at the time of [threats of mass violence offenses].)

This section also clarifies the purposes for which expunctions granted July 1, 2018 or later may be used in subsequent criminal prosecutions to include:

- Calculating prior record level and prior conviction level.
- To serve as the basis for indictment for an habitual offense charge.
- When conviction of a prior offense raises the offense level of a subsequent offense.
- To determine eligibility for relief under the first-time drug offense conditional discharge statute.

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- When permissible in a criminal case under Rule 404(b) or Rule 609 of the North Carolina Rules of Evidence.

Section 2.(b) adds expunctions obtained under G.S. 15A-145.8 (enacted in Section 1) [*G.S. 15A-145.8A see editor's note*] or G.S. 15A-146 (expunction of dismissed or findings of not guilty) to the types of expunction records law enforcement agencies and the boards that certify law enforcement officers are allowed to access for employment or certification purposes only.

All of **Section 2** becomes effective December 1, 2020.

Section 3 amends G.S. 15A-146, which governs expunctions of dismissed charges or charges resulting in findings of not guilty to make the following changes:

- Allow the district attorney to petition the court for the expunction.
- Remove the requirement that the petitioner not have any previous felony convictions.
- Remove the hearing requirements.
- For dismissals, not guilty, or not responsible findings on or after December 1, 2021, create a process where the charge will be expunged by operation of law if all the following apply:
 - All charges in the case are disposed on or after December 1, 2021.
 - All charges in the case are dismissed without leave, dismissed by the court, or result in a finding of not guilty or not responsible.
- Require the Department of Public Safety, in conjunction with the Department of Justice and the Administrative Office of the courts, to develop and submit a report to the Joint Legislative Oversight Committee on Justice and Public Safety on recommendations and the costs involved to automate the expunction process for all State agencies with records subject to expunction orders.

The changes in the expunction process for dismissals and not guilty become effective December 1, 2020, and apply to petitions filed on or after that date, except that the provision creating the expunction by operation of law does not become effective until December 1, 2021, and applies to charges disposed of on or after that date. The remainder of this section became effective June 25, 2020.

Section 4 amends G.S. 15A-145.5, which allows expunction of certain nonviolent misdemeanors and nonviolent felonies to make the following changes:

- Allows for the expunction of more than one misdemeanor conviction after a seven year waiting period. (Previous law allowed for one misdemeanor after 5 years, and one felony after 10 years.)
- Clarifies how the 5 year, 7 year or 10 year waiting period is determined.
- Modifies the requirements to allow expunction of offenses if expunctions have previously been granted under other expunction statutes but does not allow expunction if a person has been granted an expunction prior to the date of any offenses included in the current petition for expunction.
- Provides victims' rights language.

This section becomes effective December 1, 2020, and applies to petitions filed on or after that date.

EFFECTIVE DATE: Except as otherwise provided, this act became effective June 25, 2020.

EDITOR'S NOTE: G.S. 15A-145.8 as enacted by Section 1 of this act has been recodified as G.S. 15A-145.8A.