



SENATE BILL 565: Removing Barriers to Jobs and Housing.

2023-2024 General Assembly

Committee:	Senate Rules and Operations of the Senate	Date:	April 20, 2023
Introduced by:	Sens. Britt, Lazzara, Sawrey	Prepared by:	Robert Ryan
Analysis of:	Second Edition		Staff Attorney

OVERVIEW: *Senate Bill 565 makes certain changes to the laws related to the expunction of criminal offenses. Specifically, the bill makes modifications related to the automatic expunction of dismissed charges, the retention of files related to expunged charges, the types of offenses that are eligible for expunction, and to the criteria that a person must meet to be eligible for an expunction.*

CURRENT LAW AND BILL ANALYSIS:

Section 1.(a)

G.S. 15A-146(a4) mandates that any criminal charges in a case are expunged automatically by operation of law if a person is charged with any crime or infraction and the charges are then dismissed, or the person is found not guilty or not responsible.

Section 1.(a) of the bill would modify G.S. 15A-146(a4) to require that the automatic expungement occurs within 180 days after the case has reached it's final disposition.

Section 1.(b)

G.S. 15A-151 provides that the Administrative Office of the Courts (AOC) must maintain a confidential file for expungements that are granted and may only disclose the information in that file to certain entities.

Section 1.(b) of the bill would create two new subsections in 15A-151. The first new subsection, 15A-151(a1), would require that AOC retain the court records of cases that are expunged and keep them confidential and retain the files for the same length of time as required by the underlying case. The second new subsection, 15A-151(a2) would require that AOC make all confidential records maintained under this section available to the clerks of superior court. Superior court clerks are prohibited from disclosing this information to anyone for a case that is not from the clerk's own county. Superior court clerks could release information from a case that is from the clerk's own county to the following people: 1) the person (or an attorney working on behalf of the person) whose file it is, 2) the office of the district attorney, or 3) the Office of the Appellate Defender.

Section 1.(c)

G.S. 15A-151.5 provides that AOC may provide access to the confidential files related to expunged charges (maintained pursuant to G.S. 15A-151) to prosecutors for charges that were expunged under certain listed expungement statutes.

Section 1.(c) of the bill would remove the list of specific expungement statutes and allow a prosecutor to have access to these files for all expunged charges.

Section 2

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Section 1 of S.L. 2022-47, suspended the automatic expungement of dismissed charges, not guilty verdicts, and findings of not responsible from August 1, 2022, until August 1, 2023. This section became effective August 1, 2022, and expires August 1, 2023.

Section 2(c) S.L. 2022-47, provided that AOC must expunge all dismissed charges, not guilty verdicts, and findings of not responsible that were not expunged because of S.L. 2022-47 within 180 days.

Section 2 of the bill would extend the suspension of automatic expungements as provided by S.L. 2022-47 from August 1, 2023, to December 1, 2023. Section 2 also provides that when AOC expunges the dismissed charges, not guilty verdicts, and findings of not responsible that were not expunged because of S.L. 2022-47, those expungements will be deemed to have occurred within five business days after the date the individual expunction was carried out by AOC.

Section 3

G.S. 15A-145.5 allows a person to petition the court for the expunction of one or more nonviolent misdemeanors or up to three nonviolent felonies. For the purposes of this law, the definition of a *nonviolent crime* excludes the following:

- All class A through G felonies, and class A1 misdemeanors.
- Assault offenses.
- Sex offenses.
- Any felony drug offense that involves methamphetamines, heroin, or possession with intent to sell cocaine.
- Hate crimes.
- Certain breaking and entering offense listed in G.S. 14-54. These offenses are: breaking and entering into a building (i) with intent to commit any felony or larceny inside the building, or (ii) with intent to terrorize or injure an occupant of the building.
- Offenses using a commercial motor vehicle.

There are different waiting periods that must be met before charges can be expunged, depending on the type of conviction and the number of convictions. If a person seeks the expunction of one non-violent misdemeanor, there is a five-year waiting period and there is a seven-year waiting period for more than one non-violent misdemeanor. If a person seeks the expunction of one non-violent felony, there is a 10-year waiting period, and there is a 20-year waiting period for two or three felonies.

Section 3 of the bill modifies G.S. 15A-145.5 by changing the criteria of what a non-violent felony is defined as. Specifically, it removes a felony conviction for breaking and entering a building with the intent to commit any felony or larceny inside the building from the list of violent crimes.

The bill also creates a 15-year waiting period if the crime sought to be expunged is a nonviolent felony involving breaking and entering a building with the intent to commit any felony or larceny inside the building. The bill then makes conforming changes to the applicable waiting periods.

The bill also adds the following two criteria to the list of criteria which a court must find before granting any petition for expunction:

- The person is not under indictment, and no finding of probable cause exists against the defendant for a felony in any court.
- The person is not free on bond or personal recognizance pending trial for a charge that would not be eligible for expunction.

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EFFECTIVE DATE: Section 1 of this act becomes effective December 1, 2023. Section 3 of this act becomes effective December 1, 2023, and applies to petitions filed on or after that date. The remainder of this act is effective when it becomes law.