

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 121
Committee Substitute Favorable 2/27/19
Committee Substitute #2 Favorable 3/25/19
PROPOSED COMMITTEE SUBSTITUTE H121-PCS40300-BH-5

Short Title: Expunction Related to RTA/No Conviction.

(Public)

Sponsors:

Referred to:

February 21, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE EXPUNCTION OF CERTAIN OFFENSES COMMITTED
3 ON OR BEFORE NOVEMBER 30, 2019, FOR OFFENDERS UNDER THE AGE OF
4 EIGHTEEN AT THE TIME OF CONVICTION AND TO MODIFY THE LAW ON
5 EXPUNCTION OF RECORDS WHEN CHARGES ARE DISMISSED OR THERE ARE
6 FINDINGS OF NOT GUILTY.

7 The General Assembly of North Carolina enacts:

8
9 **PART I. JUVENILE EXPUNCTIONS FOR OFFENSES COMMITTED BETWEEN THE**
10 **ENACTMENT DATE AND THE EFFECTIVE DATE OF THE LEGISLATION KNOWN**
11 **AS RAISE THE AGE**

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

14 "**§ 15A-145.8 Expunction of records for offenders under the age of 18 at the time of**
15 **conviction of certain misdemeanors and felonies upon completion of the**
16 **sentence.**

17 (a) A person convicted of a misdemeanor or Class H or I felony, other than a traffic
18 offense, committed on or after the person's sixteenth birthday, but before the person's eighteenth
19 birthday, may file a petition for expunction in the trial court upon completion of any sentence or
20 period of probation imposed and payment of any restitution ordered. The court shall hold a
21 hearing and upon finding that (i) the offense was committed on or after the person's sixteenth
22 birthday, but before the person's eighteenth birthday, (ii) any sentence or period of probation was
23 completed, and (iii) the person has no outstanding restitution orders or civil judgments
24 representing amounts ordered for restitution against the person, the court shall order that the
25 person be restored, in the contemplation of the law, to the status the person occupied before such
26 conviction. A person convicted of multiple offenses shall be eligible to have those convictions
27 expunged pursuant to this section.

28 (b) Nothing in this section shall be interpreted to allow the expunction of (i) any offense
29 involving impaired driving as defined in G.S. 20-4.01(24a) or (ii) any offense requiring
30 registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the
31 person is currently required to register.

32 (c) Any petition for expungement under this section shall be on a form approved by the
33 Administrative Office of the Courts and shall be filed with the clerk of superior court in the
34 county where the person was convicted. Once filed, the clerk shall forward the petition to the



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1 district attorney, and the chief resident superior court judge or their designee. Except as otherwise
2 provided, for any petition specifically permitted under this Article, the court, without objection
3 from the district attorney following a 10-day period of notice, may either order the expunction
4 without a formal hearing or shall conduct a hearing. If an expunction without a formal hearing is
5 not ordered, the court shall state the reason(s) why the expunction was not granted. Upon order
6 of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

7 (d) No person as to whom such order has been entered shall be held thereafter under any
8 provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of
9 that person's failure to recite or acknowledge such arrest, or indictment, information, or trial, or
10 response to any inquiry made of the person for any purpose.

11 (e) The court shall also order that the conviction be expunged from the records of the
12 court. The court shall direct all law enforcement agencies, the Division of Adult Correction and
13 Juvenile Justice of the Department of Public Safety, the Division of Motor Vehicles, and any
14 other State or local government agencies identified by the petitioner as bearing record of the same
15 to expunge their records of the petitioner's conviction. The clerk shall notify State and local
16 agencies of the court's order as provided in G.S. 15A-150.

17 (f) No filing fee shall be required to file a petition under this section, and the costs of
18 expunging the records shall not be taxed against the petitioner."

19 **SECTION 1.(b)** This section is effective December 1, 2019, and applies to offenses
20 committed on or before November 30, 2019.

21 **PART II. PROSECUTOR ACCESS TO EXPUNGED FILES**

22 **SECTION 2.(a)** G.S. 15A-151.5(a) reads as rewritten:

23
24 "(a) Notwithstanding any other provision of this Article, the Administrative Office of the
25 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available
26 to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under
27 any of the following:

- 28 (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at
29 the time of conviction of misdemeanor; expunction of certain other
30 misdemeanors.
- 31 (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18
32 at the time of conviction of certain gang offenses.
- 33 (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of
34 age at the time of the offense of certain drug offenses.
- 35 (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of
36 age at the time of the offense of certain toxic vapors offenses.
- 37 (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18
38 years of age at the time of the commission of a nonviolent felony.
- 39 (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age
40 limitation.
- 41 (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- 42 (7a) G.S. 15A-145.8. Expunction of records for offenders under the age of 18 at
43 the time of conviction of certain misdemeanors and felonies upon completion
44 of the sentence.
- 45 (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- 46 (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed."

47 **SECTION 2.(b)** This section is effective December 1, 2019.

48 49 **PART III. STREAMLINE EXPUNCTIONS FOR CHARGES NOT RESULTING IN** 50 **CONVICTION**

51 **SECTION 3.(a)** G.S. 15A-146 reads as rewritten:

1 "§ 15A-146. Expunction of records when charges are dismissed or there are findings of not
2 guilty.

3 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
4 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
5 dismissed, that person may petition the court of the county where the charge was brought for an
6 order to expunge from all official records any entries relating to ~~his-that person's~~ apprehension
7 or trial. ~~The court shall hold a hearing on the petition and, upon finding that the person had not~~
8 ~~previously been convicted of any felony under the laws of the United States, this State, or any~~
9 ~~other state, Upon finding that the charge was dismissed, and without objection from the district~~
10 ~~attorney following a 10-day period of notice, the court shall~~~~may either order the expunction.~~
11 ~~expunction without a formal hearing, or shall conduct a hearing. If an expunction without a~~
12 ~~formal hearing is not ordered, the court shall state the reason(s) why the expunction was not~~
13 ~~granted. No person as to whom such an order has been entered shall be held thereafter under any~~
14 ~~provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement~~
15 ~~or response to any inquiry made for any purpose, by reason of his-that person's failure to recite~~
16 ~~or acknowledge any expunged entries concerning apprehension or trial.~~

17 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
18 offenses and the charges are dismissed, then a person may petition to have each of the dismissed
19 charges expunged. ~~The court shall hold a hearing on the petition. If the court finds that the person~~
20 ~~had not previously been convicted of any felony under the laws of the United States, this State,~~
21 ~~or any other state, charges were dismissed, and without objection from the district attorney~~
22 ~~following a 10-day period of notice, the court shall~~~~may either order the expunction~~
23 ~~expunction without a formal hearing, or shall conduct a hearing. If an expunction without a hearing is not~~
24 ~~ordered, the court shall state the reason(s) why the expunction was not granted.~~

25 (a2) If any person is charged with a crime, either a misdemeanor or a felony, or an
26 infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not
27 responsible is entered, that person may petition the court of the county where the charge was
28 brought for an order to expunge from all official records any entries relating to apprehension or
29 trial of that crime. ~~The court shall hold a hearing on the petition and upon finding that the person~~
30 ~~had not previously been convicted of any felony under the laws of the United States, this State,~~
31 ~~or any other state, Upon determining that a finding of not guilty or not responsible was entered,~~
32 ~~and without objection from the district attorney following a 10-day period of notice, the court~~
33 ~~shall~~~~may either order the expunction.~~~~expunction without a formal hearing, or shall conduct a~~
34 ~~hearing. If an expunction without a hearing is not ordered, the court shall state the reason(s) why~~
35 ~~the expunction was not granted. 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 otherwise~~
37 ~~giving a false statement or response to any inquiry made for any purpose, by reason of failure to~~
38 ~~recite or acknowledge any expunged entries concerning that crime. If a person is charged with~~
39 ~~multiple offenses and findings of not guilty or not responsible are made on charges, then a person~~
40 ~~may petition to have each of the charges disposed by a finding of not guilty or not responsible~~
41 ~~expunged. The court shall hold a hearing on the petition. If the court finds that the person had~~
42 ~~not previously been convicted of any felony under the laws of the United States, this State, or~~
43 ~~any other state, Upon determining that findings of not guilty or not responsible were entered, and~~
44 ~~without objection from the district attorney following a 10-day period of notice, the court shall~~
45 ~~may either order the expunction.~~~~expunction without a formal hearing, or shall conduct a hearing.~~
46 ~~If an expunction without a hearing is not ordered, the court shall state the reason(s) why the~~
47 ~~expunction was not granted.~~

48 The trial court at the time of trial may grant an expunction pursuant to this section
49 without conducting a formal hearing for findings of not guilty or not responsible entered while
50 under the court's immediate jurisdiction.

51"

1 **SECTION 3.(b)** The Administrative Office of the Courts shall provide forms and
2 instructions for expunction petitions that establish a standardized uniform process for all clerks
3 of superior court to follow to have petitions signed by a judge and forwarded to the State Bureau
4 of Investigation.

5 **SECTION 3.(c)** This section becomes effective December 1, 2019, and applies to
6 petitions for expunctions filed on or after that date.

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8 **PART IV. EFFECTIVE DATE**

9 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
10 law.