



SENATE BILL 445:

Expungement Process Modifications.

2017-2018 General Assembly

Committee: Senate Judiciary. If favorable, re-refer to **Date:** April 25, 2017
Rules and Operations of the Senate
Introduced by: Sens. Tucker, Bryant, McKissick **Prepared by:** Susan Sitze
Analysis of: PCS to First Edition Staff Attorney
S445-CSSA-24

OVERVIEW: *Senate Bill 445 would standardize the filing procedures for expungements, authorize prosecutors access to certain records of expungement, allow certain expunged criminal acts to be considered in calculating prior record levels during sentencing for subsequent offenses, and make other modifications to the expungement 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 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 must also be approved by the District Attorney's office. 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: Senate Bill 445 would do the following:

- Establish 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, who would then forward the signed application to the Department of Public Safety and the AOC.
- Reduce the waiting period to expunge a first-time nonviolent felony from 15 years to 10 years and make the waiting period 5 years for a nonviolent misdemeanor.
- Eliminate the "same 12 month period of time" restriction and the "prior expungement" disqualification for charges that are dismissed or findings of not guilty, as long as the applicant has not been convicted of a felony offense.
- Require any petition for expunction to be on an AOC approved form.

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- Require 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.
- Provide electronic access to all State and local law enforcement agencies and all prosecutors to the confidential AOC file for any expungement granted on or after December 1, 2016, 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).

State and local law enforcement and 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.
 - Pardon of innocence. G.S. 15A-149.
- With the exception of expungements for dismissed charges or findings of not guilty, if available to State and local law enforcement and prosecutors, the underlying criminal conviction that was expunged may be used to calculate prior record level at sentencing.

EFFECTIVE DATE: This bill would become effective December 1, 2017, and apply to petitions for expunction filed on or after that date.