

SUMMARY OF NORTH CAROLINA EXPUNCTIONS

Prepared by Dionne R. Gonder-Stanley, NCCU School of Law, and Daniel Bowes, NC Justice Center (updated June 2013)

<u>Type of Expunction</u>	<u>Criteria</u>	<u>Filing Requirements</u>	<u>Add'l Information</u>
<p>Non-violent Misdemeanor or Felony (All Ages) GS 15A-145.5</p>	<ul style="list-style-type: none"> • Eligible Offense = non-violent misdemeanor or Class H or I felony <ul style="list-style-type: none"> ○ NOT including offenses with assault as an essential element or offenses enumerated in 15A-145.5(a) (including poss with intent to sell cocaine) • If multiple NV offenses: <ul style="list-style-type: none"> ○ The convictions occurred in same session of court ○ And the DOO was before client was arrested and charged • Must wait 15 yrs from date of conviction OR until sentence (including probation) is completed (whichever is later)*** (see here→) • Record = no other convictions (other than traffic misds) • Court agrees to grant expunction in its discretion <ul style="list-style-type: none"> • No prior expunction under 15A-145, 145.1, 145.2, 145.3, 145.4, 145.5 • Ok to have prior expunction under 15A-146, 147, 148, 149 	<p>Form: AOC-CR-281 Cost: \$175 unless indigent filing</p> <ul style="list-style-type: none"> ▪ Client affidavit stating: <ul style="list-style-type: none"> ○ Has good moral character since DOC ○ No convictions (other than traffic misds) since DOC ○ Petition is a motion in the cause ○ No outstanding restitution order ▪ 2 affidavits confirming good character/reputation from people not related to client or each other ▪ Authorization for AOC and DOJ record searches (including pending charges) ▪ Notice of hrg & service on DA (DA must attempt to notify victim, has 30d to object) <p>***Unfortunately, AOC has interpreted the statute to require a waiting period of 15 years from the date of conviction or 15 years from the date the sentence ends. . This interpretation is reflected in the form. It is my firm belief, based on prior expungement statutes (and common sense) that the correct interpretation of 15A-145.5(c) ("the petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later) is that the waiting period is 15 years from the date of conviction OR the date the sentence is complete, whichever is later.</p>	<ul style="list-style-type: none"> • In reviewing petition, judge may "call upon a probation officer for any additional investigation" and "shall review any other information the court deems relevant." • If court denies petition, the order must include a finding as to the reason for the denial • Even if expunction granted, conviction must be disclosed to law enforcement or correctional agencies for employment purposes under GS 17C or 17E • Provision does NOT expunge DNA records & samples

ABBREVIATIONS: **CS**=Controlled Substance, **DOC**=Date of Conviction, **DOO**=Date of Offense, **Hrg**=Hearing, **Misd**=Misdemeanor, **NG**=Not Guilty, **NVF**=Non-violent Felony

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<p align="center">Non-violent Felony under 18 GS 15A-145.4</p>	<ul style="list-style-type: none"> • Eligible Offense = non-violent Class H or I felony <ul style="list-style-type: none"> ○ NOT including offenses with assault as an essential element or offenses otherwise enumerated in 15A-145.4(a) • DOO was before age 18 • If multiple NVF offenses: <ul style="list-style-type: none"> ○ The convictions occurred in same session of court ○ And the DOO was before client was arrested & charged • Record = no prior conviction (other than traffic misds) and no conviction within waiting period*** (see here→) • Must wait 4 yrs from conviction OR until sentence is completed (whichever is later) • Must complete 100 hrs community service • Must have GED or HS diploma • Court agrees to grant expunction in its discretion <ul style="list-style-type: none"> • No prior expunction under 15A-145, 145.1, 145.2, 145.3, 145.4, 145.5 • Ok to have prior expunction under 15A-146 	<p>Form: AOC-CR-279 Cost: \$0</p> <ul style="list-style-type: none"> ▪ Client affidavit stating: <ul style="list-style-type: none"> ○ Has good moral character since DOC ○ No convictions (other than traffic misds) since DOC *** (see below) ○ Petition is a motion in the cause ○ No outstanding restitution order judgments ○ Details the 100hrs of community svc performed since DOC ○ Has a HS diploma or GED ▪ 2 affidavits confirming good character/reputation from people not related to client or each other ▪ Authorization for AOC and DOJ record searches (including pending charges) ▪ Notice of hrg & service on DA (attempt to notify victim, has 30d to object) <p>***Notice that this statute has a large discrepancy. According to 15A-145.4(e), a person may not be granted an expunction if they have a conviction within the waiting period—however, a conviction after that would not make them ineligible for an expunction. However, NCGS 15A-145.4(c)(1) requires that the affidavit affirm that the petitioner has not been convicted of any other misdemeanor or felony since the conviction for which they seek expungement. It is my opinion, based on the construction of prior expungement statutes, that 15A-145.4(c)(1) is reckless drafting and that an individual with a subsequent conviction is eligible for expungement if the subsequent conviction occurred after waiting period.-DB</p>	<ul style="list-style-type: none"> • Before expunction ordered, judge MUST <ul style="list-style-type: none"> ○ Have probation office investigate conduct during 4yrs since conv ○ Review juvenile record ○ Review restitution paid vs amount actually due to victim ○ Review ANY relevant information/affidavits • Even if expunction granted, conviction must be disclosed to law enforcement or correctional agencies for employment purposes under GS 17C or 17E • “Any felony offense in Chapter 90 of the GS where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine” is not a nonviolent felony for purposes of this expunction, “except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H, or I felony, the PJC shall be subject to expunction...

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<p align="center">Misd 1st Offense Under age 18/21 GS 15A-145(a)</p>	<ul style="list-style-type: none"> Was a non-traffic misd committed before age 18 OR poss of alcohol (18B-302 (b)(1)) committed before age 21 Must wait until finishes probation or until 2 yrs from DOC (whichever is later) Has no outstanding orders/judgments Record = no prior conviction (other than traffic misds) and no subsequent convictions within 2 years 	<p>Form: AOC-CR-264 Cost: \$125 unless indigent filing</p> <ul style="list-style-type: none"> Client affidavit stating: <ul style="list-style-type: none"> 2 yrs good behavior No other convictions (other than traffic misds) Petition is a motion in the cause No outstanding restitution orders or judgments 2 affidavits confirming good character/reputation from people not related to client or each other Authorization for AOC and DOJ record searches Notice of hrg & service on DA (10d to object) 	<ul style="list-style-type: none"> Judge may ask probation office to investigate & verify 2 yrs of good conduct Unclear if you can have multiple misdemeanor convictions expunged as a single conviction (nonbinding AG opinion says no) Appears okay to have prior expunction Ok to have prior expunction
<p align="center">Drug Offense Under 22 GS 15A-145.2 (c)</p>	<ul style="list-style-type: none"> Was not over age 21 on DOO Conviction was: <ul style="list-style-type: none"> Misd Poss of Sch I-VI CS; drug paraphernalia; OR Felony Poss of a CS under GS 90-95(a)(3) * Has no other felony conviction; no conviction under ch 90; and no convict relating to CS *** Has been at least 12 months since DOC. Has had good behavior since DOC & completed a drug educ prof (unless waived) No prior expunction under this statute (does not say whether other expunctions disqualifies someone) 	<p>Form: AOC-CR-266 (Drug Offense) Cost: \$65</p> <ul style="list-style-type: none"> No affidavits required Statute does not specifically require AOC/DOJ record searches but form does <p>***AOC has interpreted the statute to require that the petitioner have no other misdemeanor or felony convictions to receive an expunction. Based on the construction of the statute, I firmly believe that his is an erroneous interpretation and that someone could have, for example, a misdemeanor larceny conviction and still be eligible for the expunction. For more information, feel free to call me, Daniel Bowes, at (919) 861-2061.</p>	<ul style="list-style-type: none"> Judge may waive the drug educ program if extenuating circumstances If applicant has no other convictions and is otherwise eligible, the court is required to grant expunction. If have misdemeanor convictions but otherwise eligible, court has discretion whether or not to grant relief. <p>*Individuals convicted of felony poss of a CS prior to 2012 are only eligible if offense involved <1 gram of cocaine. Those convicted of felony poss of a CS under 90-95a3 after 12/31/2011 are eligible no matter the quantity.</p>

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<p>Toxic Vapors Offense Under 22 GS 15A-145.3 (c)</p>	<ul style="list-style-type: none"> • Was not over 21 on DOO • Conviction was: <ul style="list-style-type: none"> ○ Misdemeanor under Chapter 90, Article 5A • No prior conviction under ch 90 chapters 5, 5A, or 5B • Has been at least 12 months since DOC <ul style="list-style-type: none"> • Has had good behavior since DOC & completed a drug educ prof (unless waived) • No prior expunction under this statute (but does not say whether other expunctions disqualifies someone) 	<p>Form: AOC-CR-268 (Toxic Vapors or Paraphernalia Offense)</p> <p>Cost: \$65</p> <ul style="list-style-type: none"> ▪ No affidavits required ▪ Statute does not specifically require AOC/DOJ record searches but form does <p>Note: If you or your client has multiple misdemeanor convictions but is otherwise eligible for this expunction, please call Daniel Bowes at (919) 861-2061.</p>	<ul style="list-style-type: none"> • Conviction itself is canceled in addition to being expunged • May only be granted ONCE • Judge may waive the drug educ program if extenuating circumstances or no program within a reasonable distance Judge may have probation office investigate to verify conduct since conviction • If applicant has no other convictions and is otherwise eligible, the court is required to grant expunction. If have misdemeanor convictions but otherwise eligible, court has discretion whether or not to grant relief.
<p>Gang offenses GS 15A-145.1</p>	<ul style="list-style-type: none"> • DOO was before age 18 • Was a Class H gang offense (GS ch. 14, art. 13A) or an enhanced offense under GS 14-50.22 • No outstanding restitution orders/judgments • Record = no other convictions (other than traffic misds) 	<p>Form: AOC-CR-269</p> <p>Cost: \$0</p> <ul style="list-style-type: none"> ▪ Client affidavit stating: <ul style="list-style-type: none"> ○ Good behavior during conditional discharge period (GS 14-50.29) or the 2 yrs since conviction ○ No other convictions (other than traffic misd) ○ Petition is a motion in the cause (if petition relates to a conviction) ○ No outstanding restitution orders or judgments ▪ 2 affidavits confirming good character/reputation from people not related to client or each other ▪ Notice of hrg & service on DA (10d to object) 	<ul style="list-style-type: none"> • Applies to a conviction OR a dismissal after conditional discharge under GS 14-50.29 • Judge may ask probation office to investigate & verify good conduct during the conditional discharge probation or the 2 yrs since conviction

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Pardon of Innocence	<ul style="list-style-type: none"> • Has a pardon of innocence • Filing of pardon's warrant & return is verified by clerk 	Form: AOC-CR-265 Cost: \$0	
DNA records after appeal/pardon GS 15A-148	<ul style="list-style-type: none"> • Conviction was dismissed on appeal or pursuant to a pardon of innocence • DNA records/samples were stored in State Databank (ch. 15A, art. 13) due to the underlying charge 	Form: None Cost: \$0	<ul style="list-style-type: none"> • Clerk must send expunction order & certified copy of the appellate dismissal or pardon to DOJ • When complete, DOJ must send documentation of expunction to the defense • Expunction order will not expunge records in the Databank for other offenses
DNA records after dismissal GS 15A-146(b1)	<ul style="list-style-type: none"> • Must be entitled to a 15A-146 (dismissal/NG) expunction for the underlying charge(s) • DNA records/samples were stored in State Databank (ch. 15A, art. 13) due to the underlying charge 	Form: None Cost: \$0 <ul style="list-style-type: none"> ▪ Application must be served on DA at least 20 days b4 a hearing 	<ul style="list-style-type: none"> • Expunction order must have a certified copy of the dismissal attached • When complete, DOJ must send documentation of expunction to the defense • Expunction order will not expunge records in the Databank for other offenses

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<p align="center">DNA records obtained upon arrest GS 15A-266.3</p>	<ul style="list-style-type: none"> • DNA was obtained upon arrest per 15A-266.3A • The charge result was: <ul style="list-style-type: none"> ○ Dismissal, or ○ Acquittal, or ○ Conviction of lesser-included misd not within 15A-266.3, or ○ No charges filed w/in statute of limitations, or ○ No active prosecution & 3yrs have passed since arrest ○ State is not required to keep the DNA by other laws or for unrelated offenses 	<p>Form: AOC-CR-925M Cost: \$0</p> <ul style="list-style-type: none"> ▪ Give request to prosecuting DA, who prepares AOC-CR-640 & sends to SBI in 30d ▪ Wait for notice from SBI within 30d of their receipt ▪ If expunction denied, file motion in court 	<ul style="list-style-type: none"> • Until 6/1/2012, record destruction should be automatic (without a request) except for statute of limitations or inactive prosecution situations. After 6/1/2012, it should be automatic in all situations. • Despite expunction order, SBI does not have to destroy physical evidence that was obtained from DNA but relates to another person
<p align="center">Dismissed/Not Guilty Charges GS 15A-146</p>	<ul style="list-style-type: none"> • Applies to any felony, any misd, (or an 18B-302(i) infraction before 12/1/05) • If multiple charges, they: <ul style="list-style-type: none"> ○ Were resolved in same term of court, or ○ Have a DOO within the same 12 month period • Charge result was NG or dismiss • Has no prior expunctions under GS 15A-145, -145.1, -145.2, -145.3, 145.4, 145.5, or-146¹ • Record = no felony conviction • 	<p>Form: AOC-CR-264 Cost: \$0</p>	<ul style="list-style-type: none"> • For expunction of multiple charges, they do not have to be consolidated nor related to the same transaction or occurrence—must only be within 12 months of one another.

¹ If client had a prior expunction under GS 15A-146, s/he will still qualify for another expunction under GS 15A-146 if the prior one occurred before 10/1/05.

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<p align="center">ID Theft Victim GS 15A-147</p>	<ul style="list-style-type: none"> • Charge resulted from identifying info being used without permission • Charge resulted in dismissal, NC, or conviction being set aside • Applies to any felony, misd, or infraction 	<p>Form: AOC-CR-263 Cost: \$0</p>	<ul style="list-style-type: none"> • DMV & Dept of Correction must reverse administrative actions taken as a result of the expunged charge • DMV must provide a corrected, certified driving record at no cost • Insurance co. must refund any premiums paid as result of ID theft
<p align="center">Cyberbullying- discharge & dismissal GS 14-458.1(c)</p>	<ul style="list-style-type: none"> • DOO was before age 18 • Charge was discharged & dismissed after probation • Criteria for GS 15A-146 expunction are met 	<p>Form: AOC-CR-264 Cost: \$0</p> <ul style="list-style-type: none"> ▪ Follow procedures for Dismissed/NG expunction (GS 15A-146) 	
<p align="center">Under 21 Drug Offense- Conditional discharge & dismissal GS 15A-145.2(a)</p>	<ul style="list-style-type: none"> • Was not over age 21 on DOO • Charged offense was for: <ul style="list-style-type: none"> ○ Felony Poss of a CS under GS 90.95(a)(3), or ○ Misd Poss of a Sch I-VI CS, or ○ Poss of Drug Para • Offense was discharged & dismissed under GS 90-96(a) or (a1) • Record = no convictions (other than traffic misds) 	<p>Form: AOC-CR-266 Cost: \$65</p> <ul style="list-style-type: none"> ▪ Client affidavit stating: <ul style="list-style-type: none"> ○ Had good behavior during the period of probation ○ Has no convictions (other than traffic misds) ▪ 2 affidavits confirming good character/reputation from people not related to client or each other ▪ Authorization for AOC and DOJ record searches 	<ul style="list-style-type: none"> • Judge may have probation office investigate to verify conduct during probation

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<p>Under 21 Drug/Toxic Vapors Offense-Dismissed, NG or Innocent GS 15A-145.2(b) or 15A-145.3(b)</p>	<ul style="list-style-type: none"> • Was not over age 21 on DOO • Charged offense was for: <ul style="list-style-type: none"> ○ Felony Poss of a CS under GS 90.95(a)(3), or ○ Misd Poss of a Sch I-VI CS, or ○ A Toxic Vapors Act misd, or ○ Poss of Drug Para • Charge result was dismissed, NG, nolle prosequi, or other adjud of innocence 	<p>Form: AOC-CR-266 (not yet revised for 2011 amend) Cost: \$65</p> <ul style="list-style-type: none"> ▪ No affidavits or record searches required 	
<p>Under 21 Toxic Vapors Offense-conditional discharge & dismissal GS 15A-145.3(a)</p>	<ul style="list-style-type: none"> • Was not over age 21 on DOO • Charge was inhaling or possessing a substance prohibited by GS ch 90, art 5A • Off. Was discharged & dismissed under 90-113.14(a) or (a1) • Record = no convictions (other than traffic misds) 	<p>Form: AOC-CR-268 Cost: \$0</p> <ul style="list-style-type: none"> ▪ Client affidavit stating: <ul style="list-style-type: none"> ○ Had good behavior during the period of probation ○ Has no convictions (other than traffic misds) ▪ 2 affidavits confirming good character/reputation from people not related to client or each other <p>Authorization for AOC and DOJ record searches</p>	<ul style="list-style-type: none"> • Judge may have probation office investigate to verify conduct during probation

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