



SENATE BILL 562: The Second Chance Act.

2019-2020 General Assembly

Committee:	House Rules, Calendar, and Operations of the House	Date:	June 9, 2020
Introduced by:	Sens. Britt, Daniel, McKissick	Prepared by:	Susan Sitze
Analysis of:	PCS to Fourth Edition S562-CSSA-70		Staff Attorney

OVERVIEW: *Senate Bill 562 would make various revisions to the expunction laws.*

BILL ANALYSIS:

Section 1 would enact a new G.S. 15A-145.8 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 could be expunged unless they were an offense involving impaired driving or an offense requiring registration as a sex offender.

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

Section 2.(a) would amend G.S. 15A-151.5, which governs prosecutor access to records of expunged offenses to include expunctions granted under G.S. 15A-145.8 (as enacted in Section 1 of this bill) and G.S. 15A-145.7 (Expunctions granted for first offenders under 20 years of age at the time of [threats of mass violence offenses]) as both expunctions that can be accessed by prosecutors and that can be used in subsequent convictions for specific purposes.

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

Section 2.(b) would add expunctions obtained under G.S. 15A-145.8 (enacted in Section 1) 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.

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Senate PCS 562

Page 2

Section 3 would amend 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 is effective when it becomes law.

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

- Allow for the expunction of more than one misdemeanor conviction after a seven year waiting period. (Current law allows for one misdemeanor after 5 years, and one felony after 10 years.)
- Clarify how the five year, seven year or 10 year waiting period is determined.
- Modify 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 the current petition requests be expunged.
- Provide 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 is effective when it becomes law.