



## Summary of North Carolina **EXPUNCTIONS**

Please use this summary of North Carolina expunctions as an initial guide to understanding the criteria and filing requirements of the various expunctions in North Carolina. This summary is intended to provide accurate, general information. However, this summary does not fully address the provisions of each expunction statute. In addition, laws and legal procedures are subject to frequent change and differing interpretations, and the North Carolina Justice Center cannot ensure the information in this summary is current, particularly beyond 2016.

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NORTH CAROLINA JUSTICE CENTER

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A CRIMINAL RECORD often gives rise to significant barriers to gainful employment, affordable housing, family unification, and a variety of other benefits and opportunities essential to productive citizenship. For assistance in understanding the statutory barriers to particular benefits or opportunities that may arise due to a specific criminal record, please use the UNC School of Government’s Collateral Consequences Assessment Tool at <http://ccat.sog.unc.edu/>.

In North Carolina, an expunction is the destruction of a criminal record by court order. An expunction (also called an “expungement”) of a criminal record restores the individual, in the view of the law, to the status he or she occupied before the criminal record existed. With rare exception, when an individual is granted an expunction, he or she may truthfully and without committing perjury or false statement deny or refuse to acknowledge that the criminal incident occurred. The primary exception to this is for purposes of federal immigration. Please see [North Carolina General Statutes §15A-151](#) for other exceptions.

Contrary to common belief, opportunities to expunge a criminal record in North Carolina are not common. Instead, criminal records eligible for expunction in North Carolina are generally limited to the following three categories:

- **A first-time conviction of a nonviolent offense occurring more than 15 years ago**
- **A first-time conviction of certain offenses committed before age 18/22**
- **A charge that was dismissed or disposed “not guilty”**

This summary provides details of the following twelve expunction statutes:

• Juvenile Record.....	NCGS §7B-3200 .....	[p. 4]
• Misdemeanor Under Age 18.....	NCGS §15A-145 .....	[p. 5]
• Gang Offense Under Age 18.....	NCGS §15A-145.1.....	[p. 5]
• Controlled Substance Under Age 22 .....	NCGS §15A-145.2.....	[p. 6]
• Toxic Vapors Under Age 22.....	NCGS §15A-145.3.....	[p. 7]
• Nonviolent Felony Under Age 18.....	NCGS §15A-145.4.....	[p. 8]
• Nonviolent Offense.....	NCGS §15A-145.5.....	[p. 9]
• Prostitution Offense.....	NCGS §15A-145.6.....	[p. 10]
• Charge Resulting in Dismissal or Not Guilty .....	NCGS §15A-146.....	[p. 11]
• Identity Theft.....	NCGS §15A-147.....	[p. 11]
• DNA Records.....	NCGS §15A-148.....	[p. 12]
• Pardon of Innocence.....	NCGS §15A-149.....	[p. 12]

In addition, this summary provides the following information and resources:

• Certificate of Relief.....	NCGS §15A-173 .....	[p. 13]
• Indigent Fee Waiver .....		[p. 13]
• Petitioning for Expunction of a Criminal Record.....		[p. 3]
• Eligibility Overview.....		[p. 14]
• Reviewing a Criminal Record to Determine Expunction Eligibility: Decision Tree... [p. 14]		
• How to Run a Statewide ACIS Criminal Record Report.....		[p. 15]
• How to Read an ACIS Criminal Record Report.....		[p. 16]
• Petition for Expunction of Nonviolent Offense, Sample.....		[p. 17]
• Petition for Expunction of Dismissed Charges, Sample.....		[p. 18]
• Petitioner’s Affidavit, Worksheet.....		[p. 19]
• Petitioner’s Affidavit.....		[p. 20]

- Affidavit of Good Character, Worksheet..... [p. 21]
- Affidavit of Good Character..... [p. 22]
- SBI and AOC Involvement in the Expunction Review Process..... [p. 23]

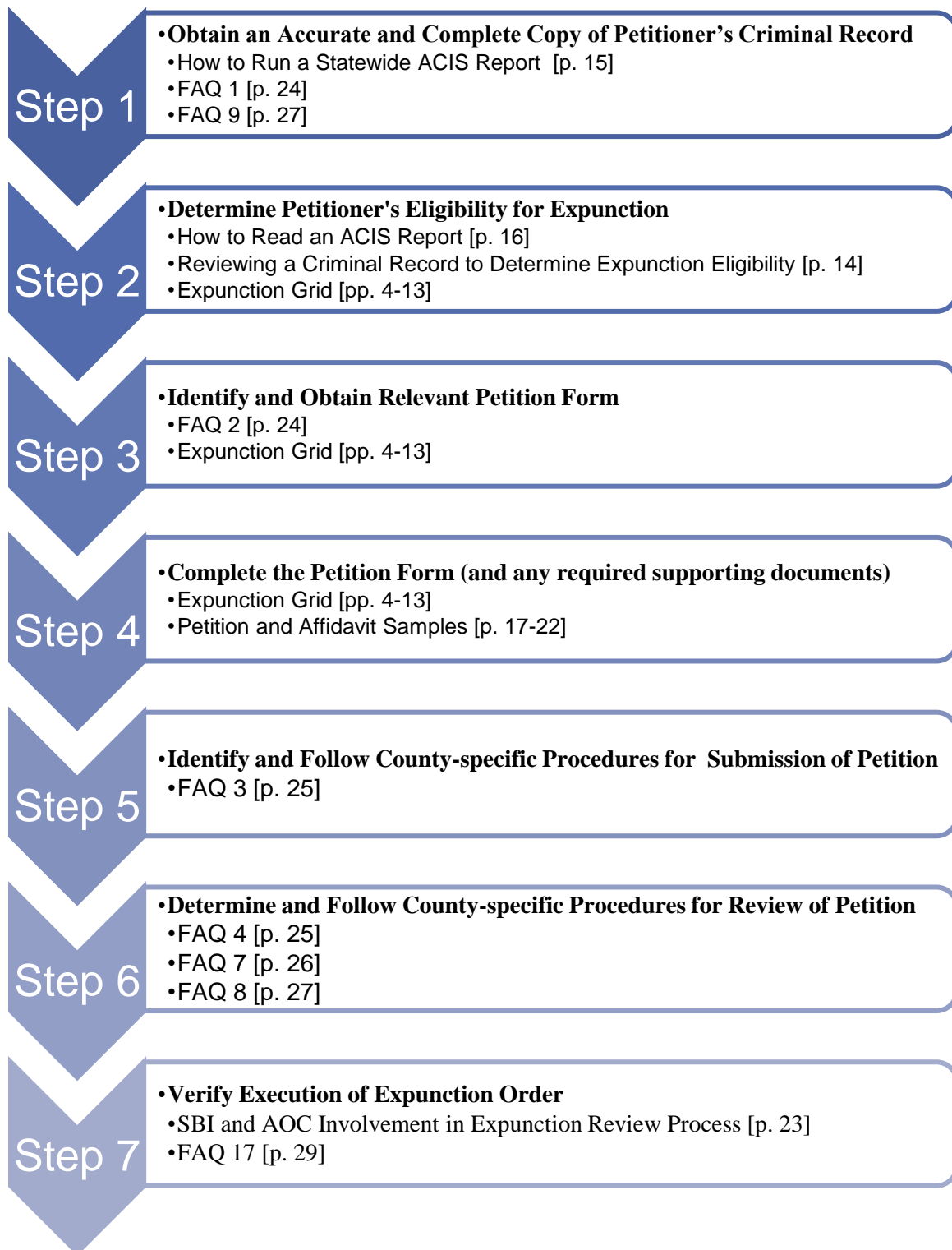
Also included in this summary are answers to questions regarding terms, interpretations, and procedures that frequently arise in petitioning for relief under North Carolina’s expunction laws. These frequently asked questions are located on pages 24 through 29.

The primary goal of this expunction guide is to increase access to expunction relief for North Carolinians with criminal records by providing members of the North Carolina bar with the information necessary to practice in this area of law. While the number of individuals eligible for expunction is limited by relatively rigid eligibility criteria, the vast majority of individuals actually eligible for expunction relief do not obtain it. The number of expunction orders in FY 2014/2015 is displayed below and startlingly small relative to the 1.5 million North Carolinians with criminal records. If you are an attorney and find this guide helpful, I urge you to consider assisting low-income North Carolinians with pro bono or reduced-fee legal services (<http://www.probono.net/nc/>).

TABLE 1 NC ADMINISTRATIVE OFFICE OF THE COURTS, 2015 EXPUNCTIONS REPORT

Expunction Type	North Carolina General Statute	Expunctions Granted FY 2014/2015	Expunctions Granted Since FY 2009
<b>Juvenile Record</b>	7B-3200	2	8
<b>Misdemeanor Under Age 18</b>	15A-145	135	948
<b>Gang Offense Under Age 18</b>	15A-145.1	0	3
<b>Controlled Substance Dismissal Under Age 22</b>	15A-145.2(a); 15A-145.2(b)	48	248
<b>Controlled Substance Conviction Under Age 22</b>	15A-145.2(c)	22	157
<b>Toxic Vapor Dismissal Under Age 22</b>	15A-145.3(a); 15A-145.3(b)	8	36
<b>Toxic Vapor Conviction Under Age 22</b>	15A-145.3(c)	2	5
<b>Nonviolent Felony Under Age 18</b>	15A-145.4	13	53
<b>Nonviolent Offense at Any Age</b>	15A-145.5	292	609
<b>Prostitution Offense</b>	15A-145.6	1	1
<b>Charge Not Resulting in Conviction</b>	15A-146	7,407	62,183
<b>Identity Theft</b>	15A-147	42	293
<b>Pardon of Innocence</b>	15A-149	0	2

## Process of Petitioning for Expunction of a Criminal Record in North Carolina



Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p><b>Juvenile Record- Dismissal</b></p> <p><a href="#">NCGS 7B-3200(h)</a></p>	<ol style="list-style-type: none"> <li>1. Alleged by juvenile petition to be delinquent or undisciplined juvenile;</li> <li>2. Juvenile petition was dismissed;</li> <li>3. Person has attained the age of:                             <ol style="list-style-type: none"> <li>i. 16 years if alleged delinquent;</li> <li>ii. 18 years if alleged undisciplined.</li> </ol> </li> </ol>		<p>Petition Form: <a href="#">AOC-J-909M</a></p> <p>Filing Fee: \$0</p> <p>Required Affidavits: None</p>
<p><b>Juvenile Record- Undisciplined</b></p> <p><a href="#">NCGS 7B-3200(a)</a></p>	<ol style="list-style-type: none"> <li>1. Adjudicated undisciplined;</li> <li>2. Attained the age of 18 years;</li> <li>3. Good behavior since adjudication.</li> </ol>		<p>Petition Form: <a href="#">AOC-J-903M</a></p> <p>Filing Fee: \$0</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> <li>a. Petitioner affidavit stating he/she has been of good behavior since the adjudication.                             <ol style="list-style-type: none"> <li>i. ***Petition form (AOC-J-903M) serves as petitioner’s affidavit.</li> </ol> </li> <li>b. 2 affidavits confirming good character from 2 individuals not related to client (or each other) who are familiar with the client’s reputation in the community                             <ol style="list-style-type: none"> <li>i. See Form <a href="#">AOC-J-904M</a> (affidavit of good character)</li> </ol> </li> </ol>
<p><b>Juvenile Record- Delinquent</b></p> <p><a href="#">NCGS 7B-3200(b)</a></p>	<ol style="list-style-type: none"> <li>1. Adjudicated delinquent;</li> <li>2. At least 18 years old;</li> <li>3. Offense for which the person was adjudicated would NOT have been a Class A, B1, B2, C, D, or E felony if committed by an adult;</li> <li>4. At least 18 months have elapsed since petitioner was released from juvenile court jurisdiction;</li> <li>5. Not subsequently adjudicated delinquent;</li> <li>6. Not convicted as an adult of any felony or misdemeanor, other than a traffic violation.</li> </ol>		<p>Petition Form: <a href="#">AOC-J-903M</a></p> <p>Filing Fee: \$0</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> <li>a. Petitioner affidavit stating:                             <ol style="list-style-type: none"> <li>i. Good behavior since adjudication.</li> <li>ii. Has not subsequently been adjudicated delinquent; and has not been convicted of a felony or misdemeanor</li> <li>iii. Petition form (AOC-J-903M) serves as petitioner’s affidavit.</li> </ol> </li> <li>b. 2 affidavits confirming good character from 2 individuals not related to client (or each other) who are familiar with the clients reputation in the community                             <ol style="list-style-type: none"> <li>i. See Form <a href="#">AOC-J-904M</a> (affidavit of good character)</li> </ol> </li> </ol>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p><b>Misdemeanor Under 18</b></p> <p><a href="#">NCGS 15A-145</a></p>	<ol style="list-style-type: none"> <li>Misdemeanor conviction committed before age 18 OR misdemeanor possession of alcohol (18b-302(b)(1)) committed before age 21                             <ol style="list-style-type: none"> <li>Both violent and nonviolent misdemeanors are eligible. The only ineligible misdemeanor offense is impaired driving under G.S. 20-4.01(24a)*</li> </ol> </li> <li>No previous misdemeanor or felony convictions, other than traffic violations.</li> <li>No subsequent misdemeanor or felony convictions, other than traffic violations, within 2 year waiting period.</li> <li>At least 2 years have passed since the date of conviction.</li> <li>The individual has fully completed his or her sentence</li> </ol>	<p>Relief is mandatory. If petitioner is eligible for expunction, the court is required to provide it.</p> <p>*This exception went into effect on Dec. 1, 2015 (see <a href="#">S.L. 2015-150</a>).</p> <p>Unclear whether multiple misdemeanor convictions occurring in the same session of court may be treated as single conviction. According to an old AG’s opinion, multiple convictions occurring in the same session of court may not be treated as single conviction. However, based on the text of other expunction statutes, courts typically expunge multiple misdemeanor conviction occurring in the same session of court.</p> <p>Having previously been granted an expunction does not make the petitioner explicitly ineligible for expunction under 15A-145.</p>	<p>Form: <a href="#">AOC-CR-264</a></p> <p>Cost: \$175 (but may file indigent fee waiver)</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> <li>Petitioner affidavit stating:                             <ol style="list-style-type: none"> <li>Has been on good behavior for the 2-year waiting period and has not been convicted of any felony or misdemeanor other than a traffic violation.</li> <li>Petition is a motion in the cause in the case wherein the petitioner was convicted.</li> <li>No restitution orders or civil judgments representing amounts ordered for restitution against him are outstanding.</li> </ol> </li> <li>2 affidavits confirming good character from 2 individuals not related to client (or each other) who are familiar with the clients reputation in the community.</li> </ol> <p>Notice: petition must be served on DA.</p>
<p><b>Gang Offense Under 18</b></p> <p><a href="#">NCGS 15A-145.1</a></p>	<ol style="list-style-type: none"> <li>Conviction for a Class H felony under Article 13A, Chapter 14, OR an offense for which punishment was enhanced pursuant to GS 14-50.22.</li> <li>No previous felony or misdemeanor convictions other than a traffic violation</li> <li>Date of offense was prior to petitioner’s 18<sup>th</sup> b’day.</li> <li>At least 2 years have passed since conviction.</li> <li>Petitioner has completed all terms of sentence.</li> <li>No felony or misdemeanor convictions other than traffic offenses for two years from the date of conviction.</li> <li>No outstanding restitution or civil judgments representing amounts ordered for restitution.</li> </ol>	<p>Under this same statute, you can also have a gang-related charge that was dismissed pursuant to NCGS 14-50.29 expunged if criteria identical to expungement of a gang conviction are satisfied.</p>	<p>Form: <a href="#">AOC-CR-269</a></p> <p>Cost: \$175 (but may file indigent fee waiver)</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> <li>Petitioner affidavit stating:                             <ol style="list-style-type: none"> <li>Has been on good behavior for the 2-year waiting period and has not been convicted of any felony or misdemeanor other than a traffic violation.</li> <li>Petition is a motion in the cause in the case wherein the petitioner was convicted.</li> <li>No restitution orders or civil judgments representing amounts ordered for restitution against him are outstanding.</li> </ol> </li> <li>2 affidavits confirming good character from 2 individuals not related to client (or each other) who are familiar with the clients reputation in the community.</li> </ol> <p>Petition must be served on DA.</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p><b>Dismissed Drug Charge Under Age 22</b></p> <p><a href="#">NCGS 15A-145.2(a)</a></p>	<ol style="list-style-type: none"> <li>Charge dismissed under G.S. 90-96(a) or (a1) diversionary program.</li> <li>Not over 21 years of age at time of offense.*</li> </ol>	<p>*There is a significant discrepancy here. Statute only seems to require the 2 conditions listed here for eligibility. However, statute also requires affidavit stating that petitioner has no other convictions. If that's the case, then much more narrow than 15A-146—and so the only time to use this is if one has already received expunction under 15A-146.</p>	<p>Form: <a href="#">AOC-CR-266</a></p> <p>Cost: \$175 (unclear if can file indigent waiver)</p> <p>Required Affidavits: Petitioner affidavit stating has not been convicted of any other conviction. Affidavits of 2 others attesting to good reputation.</p>
<p><b>Dismissed Drug Charge Under Age 22</b></p> <p><a href="#">NCGS 15A-145.2(b)</a></p>	<ol style="list-style-type: none"> <li>Charge dismissed or finding of not guilty;               <ol style="list-style-type: none"> <li>Misdemeanor charge under Art 5, Chap 90</li> <li>Felony charge under 90-95(a)(3)                   <ol style="list-style-type: none"> <li>Prior to 2012, less than 1 gram of cocaine</li> <li>2012 and beyond, a controlled substance</li> </ol> </li> </ol> </li> <li>Not over 21 years of age at time of offense.</li> </ol>		<p>Form: <a href="#">AOC-CR-266</a></p> <p>Cost: \$175 (unclear if you can file indigent fee waiver)</p> <p>Required Affidavits: none</p>
<p><b>Drug Conviction Under Age 22</b></p> <p><a href="#">NCGS 15A-145.2(c)</a></p>	<ol style="list-style-type: none"> <li>Conviction for:               <ol style="list-style-type: none"> <li>Misdemeanor Drug Possession (under Chapter 90, Article 5);</li> <li>Misdemeanor Drug Paraphernalia (under GS 90-113.22); <u>OR</u></li> <li>Felony Possession under GS 90-95(a)(3)*</li> </ol> </li> <li>At least 12 months have passed since the date of conviction.</li> <li>Petitioner was not over the age of 21 at the time of the offense.</li> <li>Petitioner has either successfully completed drug program or will ask the court to waive this requirement.</li> <li>Petitioner has no other felony conviction, misdemeanor conviction under Chapter 90, or any conviction related to controlled substances. **</li> <li>No prior expunction under 15A-145.2(c).</li> </ol>	<p>Silent as to whether multiple convictions occurring in same session of court may be treated as single conviction for expunction purposes.</p> <p>Judge may waive the drug education program requirement in extenuating circumstances.</p> <p>*According to AOC's interpretation, individuals convicted of felony possession under GS 90-95(a)(3) prior to 2012 are only eligible for expunction under this statute if the offense involved less than 1 gram of cocaine. Those convicted of felony possession under GS 90-95(a)(3) in 2012 and beyond are eligible for expunction no matter the quantity or the specific controlled substance. The basis of this interpretation is not captured within the text of the statute; instead it is based on a strict textual interpretation of the "effective date" provision of Section 5 of the <a href="#">Justice Reinvestment Act</a>. Specifically, Section 5.(e) reads: "This section becomes effective January 1, 2012, and applies to persons entering a plea or who are found guilty of an offense on or after that date." There is an argument to be made that the provision was focused on the portions of Section 5 that expanded eligibility for conditional discharge of first offenses and established advanced supervised release, and was not intended to deprive otherwise eligible individuals of expunction relief.</p>	<p>Form: <a href="#">AOC-CR-266</a></p> <p>Cost: \$175 (but may file indigent status fee waiver)</p> <p>Required Affidavits: None</p> <p>**AOC has interpreted the statute to require that the petitioner have no other misdemeanor or felony convictions in order to receive an expunction under this statute. Based on the construction of the statute, there is a reasonable argument that this is an erroneous interpretation and that someone with a subsequent misdemeanor conviction unrelated to controlled substances would still be eligible for expunction. For guidance on "may" v. "shall" ambiguity see In Re Expungement for Spencer, 140 N.C. App. 776 (2000).</p> <p>***I have successfully persuaded courts to interpret the "may" as providing the court discretion to expunge a first-time drug conviction where an individual has a subsequent non-drug misdemeanor conviction</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p><b>Dismissed Charge Toxic Vapors/Drug Paraphernalia Charge Under 22 <a href="#">NCGS 15A-145.3(a)</a></b></p>	<ol style="list-style-type: none"> <li>Charge dismissed under G.S. 90-113.14(a) or (a1) diversionary program.</li> <li>Not over 21 years of age at time of offense.*</li> </ol>	<p>*There is a significant discrepancy here. Statute only seems to require the 2 conditions listed here for eligibility. However, statute also requires affidavit stating that petitioner has no other convictions. If that's the case, then much more narrow than §15A-146—and so the only time to use this is if petitioner has previous expunction under §15A-146.</p>	<p>Form: <a href="#">AOC-CR-268</a>                      Cost: \$175 (unclear if you can file for indigent fee waiver)                      Required Affidavits: Petitioner affidavit stating has not been convicted of any other conviction. Affidavits of 2 others attesting to good reputation.</p>
<p><b>Dismissed Charge Toxic Vapors/Drug Paraphernalia Charge Under 22 <a href="#">NCGS 15A-145.3(b)</a></b></p>	<ol style="list-style-type: none"> <li>Misdemeanor charge:                             <ol style="list-style-type: none"> <li>Under Article 5A, Chapter 90</li> <li>For possession of drug paraphernalia under GS 90-113.22</li> </ol> </li> <li>Charge dismissed or finding of not guilty;</li> <li>Not over 21 years of age at time of offense.</li> </ol>		<p>Form: <a href="#">AOC-CR-268</a>                      Cost: \$175 (unclear whether you can file for indigent fee waiver)                      Required Affidavits: none</p>
<p><b>Toxic Vapors/Drug Paraphernalia Conviction Under Age 22 <a href="#">NCGS 15A-145.3(c)</a></b></p>	<ol style="list-style-type: none"> <li>Misdemeanor conviction under Chapter 90, Article 5A.</li> <li>At least 12 months have passed since the date of conviction.</li> <li>Petitioner was not over the age of 21 at the time of the offense.</li> <li>Petitioner has either successfully completed drug program or will ask the court to waive this requirement.</li> <li>Petitioner has no other conviction under Articles 5, 5A, or 5B of Chapter 90, or any other conviction related to controlled substances. **</li> <li>No prior expunction under 15A-145.3(c).</li> </ol>	<p>Silent as to whether multiple convictions occurring in same session of court may be treated as single conviction for expunction purposes.</p> <p>Judge may waive the drug education program requirement in extenuating circumstances.</p> <p>**AOC has interpreted the statute to require that the petitioner have no other misdemeanor or felony convictions in order to receive an expunction under this statute. Based on the construction of the statute (use of “may” and “shall”), there is a reasonable argument that this is an erroneous interpretation and that someone with subsequent misdemeanor convictions not related to controlled substances may be eligible for expunction under this statute. To discuss this interpretation feel free to call me at (919) 861-2061.</p>	<p>Form: <a href="#">AOC-CR-268</a>                      Cost: \$175 (unclear if you can file for indigent fee waiver)                      Required Affidavits: None</p>



Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p><b>Nonviolent Felony Under 18</b></p> <p><a href="#">NCGS 15A-145.4</a></p>	<ol style="list-style-type: none"> <li>1. Conviction of a nonviolent felony *                             <ol style="list-style-type: none"> <li>a. Multiple felonies may be treated as one conviction ONLY if convictions occurred in the same session of court.</li> </ol> </li> <li>2. Date of offense for felony conviction was prior to 18<sup>th</sup> b'day.</li> <li>3. No prior misdemeanor or felony convictions, other than traffic violations. (see FAQ 9)</li> <li>4. No subsequent misdemeanor or felony convictions, other than traffic violations, within 4 year waiting period.</li> <li>5. At least 4 years have passed since the date of conviction.</li> <li>6. The individual has fully completed his or her sentence (incl. probation)</li> <li>7. The petitioner has no outstanding warrants or pending criminal cases</li> <li>8. No previous expunctions under 15A-145, -145.1, -145.2, -145.3, -145.4, -145.5</li> <li>9. Petitioner has performed 100 hours of community service since conviction and has a HS diploma or GED.</li> </ol>	<p>*The term nonviolent misdemeanor or nonviolent felony means any misdemeanor or felony EXCEPT:</p> <ol style="list-style-type: none"> <li>A. a Class A - G felony or a Class A1 misdemeanor</li> <li>B. An offense that includes assault as "an essential element of the offense"</li> <li>C. An offense that requires sex offender registration (Article 27A, Chapter 14)</li> <li>D. Specified stalking offenses (see 15A-145.5(a)(4))</li> <li>E. Any felony offense in Chapter 90 that involves methamphetamines, heroin, or poss with intent to sell or deliver cocaine except that if a PJC has been entered for an offense classified as either a Class G, H, or I felony</li> <li>F. Specified hate crimes (see 15A-145.5(a)(6) and 15A-145.5(a)(7))</li> <li>G. Any felony offense in which a commercial motor vehicle was used in the commission of the crime</li> <li>H. Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a). (This exception went into effect on Dec. 1, 2015-see <a href="#">S.L. 2015-150</a>).</li> </ol> <p>Judge has discretion whether or not to grant expunction for eligible individuals. If court denies petition, the order must include a finding as to the reason for the denial.</p>	<p>Form: <a href="#">AOC-CR-279</a></p> <p>Cost: \$175 (but may file indigent fee waiver)</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> <li>a. Petitioner affidavit stating:                             <ol style="list-style-type: none"> <li>i. Has good moral character since date of conviction</li> <li>ii. No convictions other than traffic violations**</li> <li>iii. Details of 100 hrs of community service</li> <li>iv. Has a HS diploma or GED</li> </ol> </li> <li>b. 2 affidavits confirming good character from 2 individuals not related to client (or each other) who are familiar with the clients reputation in the community</li> </ol> <p>Notice: must provide notice to DA</p> <p>**This statute has a significant discrepancy. According to a reasonable reading of 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 the waiting period would not make them ineligible for expunction. However, 15A-145.4(c)(1) requires that the affidavit affirm that the petition has not been convicted of any other misdemeanor or felony since the nonviolent felony conviction.</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p style="text-align: center;"><b>Nonviolent Misdemeanor or Felony (Any Age)</b></p> <p><a href="#"><u>NCGS 15A-145.5</u></a></p>	<ol style="list-style-type: none"> <li>1. One nonviolent felony or nonviolent misdemeanor conviction*                             <ol style="list-style-type: none"> <li>a. Multiple convictions may be treated as one conviction ONLY if convictions occurred in the same session of court AND none of the offenses are alleged to have occurred after the petitioner had already been charged with any of the offenses resulting in conviction.</li> </ol> </li> <li>2. No other misdemeanor or felony convictions, other than traffic violations.</li> <li>3. At least 15 years have passed since the date of conviction.**</li> <li>4. The individual has fully completed his or her sentence (incarceration, probation, etc).</li> <li>5. The petitioner has no outstanding warrants or pending criminal cases</li> <li>6. No previous expunctions under 15A-145, -145.1, -145.2, -145.3, -145.4, -145.5</li> </ol>	<p>*The term nonviolent misdemeanor or nonviolent felony means any misdemeanor or felony EXCEPT:</p> <ol style="list-style-type: none"> <li>A. a Class A - G felony or a Class A1 misdemeanor</li> <li>B. An offense that includes assault as “an essential element of the offense”</li> <li>C. An offense that requires sex offender registration (Article 27A, Chapter 14)</li> <li>D. Specified stalking offenses (see 15A-145.5(a)(4))</li> <li>E. Any felony offense in Chapter 90 that involves methamphetamines, heroin, or poss with intent to sell or deliver cocaine</li> <li>F. Specified hate crimes (see 15A-145.5(a)(6) and 15A-145.5(a)(7))</li> <li>G. Any felony offense in which a commercial motor vehicle was used in the commission of the crime</li> <li>H. Various felony breaking and entering offenses (see 15A-145.5(a)(7a))</li> <li>I. Any offense involving impaired driving as defined in G.S. 20-4.01(24a) (this exception went into effect on Dec. 1, 2015--see <a href="#"><u>S.L. 2015-150</u></a>).</li> <li>J. “any offense that is an attempt to commit” any of the offenses captured in A-I above.</li> </ol> <p>**There is controversy as to whether the waiting period begins on the date of conviction or the date the sentence is completed. Based on a strong textual argument, I have persuaded several courts that the waiting period begins on the date of conviction. I’m glad to provide guidance on this interpretation- (919) 861-2061. Whereas Form AOC-CR-281 originally reflected the interpretation that the waiting period begins on the date the sentence is completed, the AOC Criminal Forms Committee revised the form to be neutral on this point of law in May 2014. However, the SBI “expunction checklist” continues to indicate individuals are ineligible for expunction if it has not been 15 years since the date of sentence completion.</p>	<p>Form: <a href="#"><u>AOC-CR-281</u></a></p> <p>Cost: \$175 (but may file indigent status fee waiver)</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> <li>a. Petitioner affidavit stating:                             <ol style="list-style-type: none"> <li>i. Has good moral character since date of conviction</li> <li>ii. No convictions (other than traffic violations) since conviction</li> <li>iii. Petition is a motion in the cause</li> <li>iv. No outstanding restitution order</li> </ol> </li> <li>b. 2 affidavits confirming good character from 2 individuals not related to client (or each other) who are familiar with the clients reputation in the community</li> </ol> <p>Notice: must provide notice to DA.</p> <p>Judge has discretion whether or not to grant expunction for eligible individuals. If court denies petition, the order must include a finding as to the reason for the denial.</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p><b>Prostitution Offense</b></p> <p><a href="#">NCGS 15A-145.6</a></p>	<ol style="list-style-type: none"> <li>1. Conviction for a prostitution offense:                             <ol style="list-style-type: none"> <li>a. under GS §14-204 (after 9/30/2013)</li> <li>b. under GS §14-204(7) (prior to 10/1/2013)</li> </ol> </li> <li>2. No prior convictions for any violent misdemeanor or violent felony*</li> <li>3. Satisfies ONE of the following three criteria:                             <ol style="list-style-type: none"> <li>a. Participation in the prostitution offense was a result of having been a trafficking victim;</li> <li>b. The person has no prior convictions for a prostitution offense and at least 3 years have passed since the date of conviction or the completion of any sentence, whichever is later; OR</li> <li>c. Petitioner received a conditional discharge pursuant to GS §14-204(b)</li> </ol> </li> <li>4. No subsequent misdemeanor or felony convictions, other than traffic violations.</li> <li>5. No outstanding warrants or pending criminal cases</li> <li>6. No outstanding restitution orders or civil judgments representing amounts order for restitution</li> </ol>	<p>*"Violent felony or violent misdemeanor": "A class A – G felony or a Class A1 misdemeanor that includes assault as an essential element of the offense."</p>	<p>Form: <a href="#">AOC-CR-282</a></p> <p>Cost: \$175 (but may file indigent status fee waiver)</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> <li>a. Petitioner affidavit stating:                             <ol style="list-style-type: none"> <li>i. Petitioner has no prior conviction of a violent felony or violent misdemeanor,</li> <li>ii. Has been of good moral character since the date of the conviction of prostitution offense in question,</li> <li>iii. Has not been convicted of any felony or misdemeanor since the date of the conviction of the prostitution offense in question,</li> <li>iv. No restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.</li> </ol> </li> <li>b. 2 affidavits confirming good character from 2 individuals not related to client (or each other) who are familiar with the clients reputation in the community</li> </ol> <p>Notice: must provide notice to DA</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
<p><b>Charge Not Resulting in Conviction</b></p> <p><a href="#">NCGS 15A-146</a></p>	<ol style="list-style-type: none"> <li>1. Felony charge or misdemeanor charge was disposed of by a dismissal, finding of not guilty, or finding of not responsible.                             <ol style="list-style-type: none"> <li>a. Multiple charges may be expunged if each alleged offense occurred within the same 12 month period OR all the charges were resolved in the same session of court.</li> <li>b. No requirement that the charges are related to the same transaction or occurrence—simply need to be within same 12 month period.</li> </ol> </li> <li>2. Petitioner has not been convicted of a felony.*</li> <li>3. Petitioner has not received an expunction under §§15A-145, -145.1, -145.2, -145.3, -145.4, -145.5, or -146.</li> </ol>	<p>Relief is mandatory if petition is eligible.</p> <p>Open question: Is an individual who is charged with an original offense but pleads guilty to a lesser included offense eligible for an expunction of the original charge as a dismissed charge?</p> <p>*Misdemeanor convictions do not impact eligibility for expunction under §15A-146.</p>	<p>Form: <a href="#">AOC-CR-264</a></p> <p>Cost: \$0, unless dismissal occurred as the result of the completion of a diversionary program or conditional discharge, then \$175 (but may file indigent status fee waiver)</p> <p>Required Affidavit None.</p> <p>** Petitions for expunction of multiple charges are the petitions most often filed incorrectly. If a petition is filed for multiple charges where the dates of the offenses are not within the same 12 month period (or the same disposition date) the court will likely deny the entire petition. Accordingly, if you are petitioning for expunction of multiple charges be sure that each charge has a date of offense within the same 12 month period OR all the dismissed charges have the same date of disposition.</p>
<p><b>Identity Theft/Mistaken Identity</b></p> <p><a href="#">NCGS 15A-147</a></p>	<p>A. For charges filed before Dec. 1, 2015, an individual may petition for expunction if:</p> <ol style="list-style-type: none"> <li>1. The identity of the petitioner was used without permission of the petitioner and this use resulted in a charge(s) against the petitioner.</li> <li>2. The charge(s) against the petitioner in this matter was:                             <ol style="list-style-type: none"> <li>i. Dismissed,</li> <li>ii. Disposed “not guilty,”</li> <li>iii. Or conviction set aside</li> </ol> </li> </ol>	<p>B. For charges filed on or after Dec. 1, 2015, an individual may petition for expunction if:</p> <ol style="list-style-type: none"> <li>1. The identity of the individual was used without permission OR mistaken identity* resulted in a charge that:                             <ol style="list-style-type: none"> <li>i. Was disposed “not guilty,” or</li> <li>ii. Resulted in a conviction which was subsequently set aside.</li> </ol> </li> <li>C. For charges filed on or after Dec. 1, 2015, a charge is to be AUTOMATICALLY** expunged if:                             <ol style="list-style-type: none"> <li>1. The identity of the individual was used without permission OR mistaken identity* resulted in a charge that:                                     <ol style="list-style-type: none"> <li>i. Was dismissed.</li> </ol> </li> </ol> </li> </ol> <p>**Automatic expunction- “the prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the court shall order the expunction.” For more information on the expunction of charges initiated on or after Dec. 1, 2015, please see <a href="#">S.L. 2015-202</a>.</p>	<p>Form: <a href="#">AOC-CR-263</a> (for dispositions requiring defendant to petition)</p> <p><a href="#">AOC-CR-283</a> (for dispositions triggering automatic expunctions)</p> <p>Cost: \$0</p> <p>Required Affidavits: None.</p> <p>*Relatively broad definition of mistaken identity: “For purposes of this section, the term “mistaken identity” means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime.”</p>

Expunction Type/Statute	Criteria	Additional Information	Filing Requirements
<p><b>DNA Records</b> <a href="#">NCGS 15A-148</a></p>	<p>One of the following grounds exist for expunction of an individual's DNA sample from the state DNA databank:</p> <ul style="list-style-type: none"> <li>A. Charge has been dismissed;</li> <li>B. Defendant has been acquitted of the charge;</li> <li>C. Defendant has been convicted of a lesser-included misdemeanor offense that is not an offense requiring a DNA sample;</li> </ul>	<p>D. No charge was filed within statute of limitations; OR</p> <p>E. No conviction has occurred, at least 3 years have passed since the date of arrest, and no active prosecution is occurring.</p>	<p>Form: <a href="#">AOC-CR-640</a>*</p> <p>As of June 1, 2012, an individual is no longer required to file a petition for expunction of the DNA sample. Now, if an individual is eligible for expunction of the DNA sample, "no request form shall be required and the prosecuting district attorney shall initiate the procedure" for expunction. Accordingly, AOC-CR-640 is the form the prosecutor must complete as necessary.</p>
<p><b>Pardon of Innocence</b> <a href="#">NCGS 15A-149</a></p>	<p>Received a pardon of innocence pursuant to NCGS 147-25.</p>		<p>Form: <a href="#">AOC-CR-265</a> Cost: \$0 Must attach copy of pardon of innocence to petition.</p>

Statute	Criteria	Additional Information	Filing Requirements
<p><b>Certificate of Relief</b></p> <p><a href="#">NCGS 15A-173</a></p>	<ol style="list-style-type: none"> <li>1. Convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court.</li> <li>2. No other convictions for a felony or misdemeanor other than a traffic violation.</li> <li>3. At least 12 months have passed since the individual completed his or her criminal sentence (including probation).</li> <li>4. Individual is either:                             <ol style="list-style-type: none"> <li>a. Engaged in, or seeking to engage in, a lawful occupation or activity, OR</li> <li>b. Has a lawful source of support.</li> </ol> </li> <li>5. No criminal charges are currently pending against the individual.</li> <li>6. No previous petition for a certificate of relief has been filed, or at least 12 months have passed since the denial of the previous petition.</li> <li>7. Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.</li> </ol>	<p>A certificate of relief is not an expunction but may provide several types of significant relief, including:</p> <ol style="list-style-type: none"> <li>a. A petitioner’s employer protection from negligent hiring liability.</li> <li>b. A petitioner’s landlord protection from negligent leasing liability.</li> <li>c. Override automatic exclusions—allow opportunity for discretion</li> <li>d. Viewed favorably in discretionary decisions.</li> </ol>	<p>Form: <a href="#">AOC-CR-273</a></p> <p>Cost: \$0</p> <p>Required Affidavits: None, but petitioner may submit additional materials to support the claims made in this petition at the hearing.</p> <p>Notice: must provide notice to DA at least 3 weeks prior to hearing</p> <p>Filing Procedures: Certificates of Relief are a new and significantly under-utilized type of relief. Accordingly, many counties have not established procedures for filing or review of a petition for a certificate of relief. If your county of filing has not yet established such procedures, you may consider referring them to the procedures established in Wake County for guidance.</p>
<p><b>Indigent Fee Waiver/Civil Affidavit of Indigency</b></p>	<p>In order to automatically qualify for an indigent fee waiver you must complete form AOC-G-106* and be a current recipient of one of the following:</p> <ol style="list-style-type: none"> <li>1. Food stamps</li> <li>2. Aid to Families with Dependent Children (AFDC)</li> <li>3. Supplemental Security Income (SSI)</li> <li>4. Representation by legal services organization (or private attorney working on behalf of legal services organization)</li> </ol> <p>An individual not currently receiving one of these benefits, may be asked to submit an Civil Affidavit of Indigency (AOC-CV-226)</p>	<p>*When completing form AOC-G-106 for purposes of expunction check the box that says, “Filing a Motion...”</p> <p>Several counties have been requiring petitioners to submit either AOC-CR-226 (Criminal Affidavit of Indigency). This is incorrect as petitions for expunction are civil actions. In such a circumstance, the clerk should be directed to page 10 of AOC’s “Expunction Guide for Clerks” which states: “The clerk should evaluated a request to petition for expunction as an indigent in the same way that the clerk evaluates requests to sue as an indigent in civil cases under G.S. 1-110. Similarly, if an individual satisfies one of the 4 automatic indicators of indigency (as identified by GS 1-110), they should only be required to complete AOC-G-106 and not the more arduous AOC-CV-226 (Civil Affidavit of Indigency).</p>	<p>Form:</p> <p><a href="#">AOC-G-106</a></p> <p><a href="#">AOC-CV-226</a></p> <p>Cost: \$0</p> <p>Required Affidavits:</p> <p>An individual may be required to provide supporting documentation.</p>

## Eligibility Overview

Expunction Statute	Disqualifying Previous Conviction	Disqualifying Subsequent Conviction	Wait Period	Disqualifying Previous Expunction	Judicial Discretion
<b>7B-3200(b)</b>	----	Juvenile adjudication; (M) or (F) as adult	18 months since release from juvenile court jurisdiction (and at least 18 years old)	----	No
<b>15A-145</b>	(M); (F)	(M) or (F) during wait period	2 years	----	No
<b>15A-145.1</b>	(M); (F)	(M) or (F) during wait period	2 years	----	No
<b>15A-145.2(c)</b>	(M); (F)	(M) involving drugs*; (F)	1 year	15A-145.2	Yes*
<b>15A-145.3(c)</b>	(M); (F)	(M) involving drugs*; (F)	1 year	15A-145.3	Yes*
<b>15A-145.4</b>	(M); (F)	(M) or (F) during wait period	4 years	15A-145—15A-145.5	Yes
<b>15A-145.5</b>	(M); (F)	(M); (F)	15 years	15A-145—15A-145.5	Yes
<b>15A-145.6</b>	violent (F) or (M)	(M); (F)	3 years**	15A-145—15A-145.6	No
<b>15A-146</b>	(F)	(F)	Immediate	15A-145—15A-146	No
<b>15A-147</b>	----	----	Immediate	----	No
<b>15A-149</b>	----	----	Immediate	----	No
<b>Cert of Relief</b>	(M); (F)	(M); (F)	1 year after sentence complete	----	Yes

Notes: (1) Convictions of traffic violations do not impact expunction eligibility; (2) Wait periods begin at the date of conviction unless otherwise noted; \*This reflects a novel but successful interpretation of the law (see pp. 6-7); \*\*Wait period for prostitution offense is waived if product of human trafficking.

## Reviewing a Criminal Record to Determine Expunction Eligibility: Decision Tree

Charge 1: What was the disposition of the charge?	
<p>If disposed guilty:</p> <p>A. What age was the person on the date of offense?</p> <ul style="list-style-type: none"> <li>• Birth Date → Offense Date</li> <li>• Under Age 18/22 v. Any Age</li> </ul> <p>B. What were the elements of the offense?</p> <ul style="list-style-type: none"> <li>• Violent v. Nonviolent</li> <li>• Controlled Substance</li> </ul> <p>C. How long has it been since the conviction?</p> <ul style="list-style-type: none"> <li>• Conviction Date → Current Date</li> <li>• Is relevant wait period satisfied?</li> <li>• Is sentence fully satisfied?</li> </ul> <p>D. Does the individual have a disqualifying conviction?</p>	<p>If disposed not guilty or dismissed:</p> <p>A. Was the charge for Poss of Controlled Substance or Drug Paraphernalia occurring before age 22?</p> <p>B. Does the individual have a felony conviction?</p> <p>C. Can multiple charges be grouped together and expunged?</p> <ul style="list-style-type: none"> <li>• Offense dates within same 12 month period OR same disposition date</li> <li>• If multiple charges cannot be grouped together for expunction, what is the client’s preferred use of expunction?</li> </ul>
Charge 2: Repeat	

## How to Run a Statewide ACIS Report

Determining an individual’s eligibility for expunction of a conviction or charge often requires a review of the individual’s entire criminal record. However, it is common for attorneys to rely on an individual’s local Automated Criminal/Infraction System (“ACIS”) criminal record report because it is typically the most accessible criminal record report. Unfortunately, a local ACIS report will only reflect the portions of an individual’s criminal record that occurred in the county in which the report is generated. This is problematic because an individual may have a conviction arising from an incident in a different county that impacts the individual’s eligibility for expunction. More concerning is the not-so-farfetched scenario in which an individual has multiple dismissed charges eligible for expunction in multiple counties but an attorney only petitions for expunction of the dismissed charge(s) that appear on the local ACIS report. Once this petition is granted, the individual is disqualified from expunging the remaining dismissed charges. For these reasons, it is important that an attorney obtain and review a criminal record report capturing an individual’s entire North Carolina criminal history. For now, it is possible to obtain a statewide ACIS criminal record report by entering “G” into the Mode field of the ACIS inquiry menu in addition to the individual’s name (Figure 1). Doing so will take you to the “Statewide Name Search Request” screen (Figure 2) from which you can obtain the individual’s entire North Carolina criminal history (see search and navigation tips below). In the near future, the Administrative Office of the Courts will expand access across the state to a much more user-friendly criminal record search program that is currently being piloted in Wake County (Figure 3).

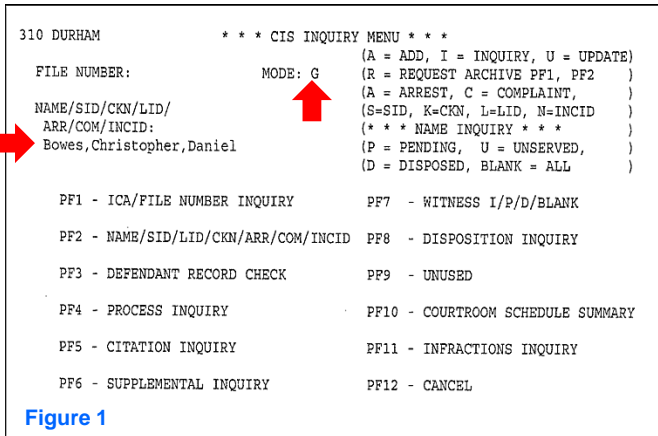


Figure 1

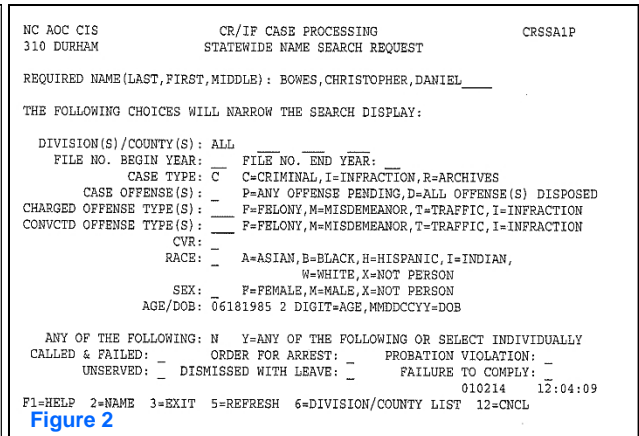


Figure 2

### ACIS Search Tips

- Use “tab” to navigate fields
- Don’t insert spaces between names in name search
- Use birthdates, esp. for common names
- Broaden and narrow search as necessary
  - “Smith,John”
  - “Smith,J”
  - “Smith,John,M”
- Look for variations of name and misspellings
  - Smith,John
  - Smith,John,M
  - Smith,John,Michael
  - Smyth,Jon (w/ same birthdate and address)

### ACIS Navigation

- F2 (press to move forward with name search)
- F3 (previous screen)
- F7 (previous search results page)
- F8 (next search results page)
- “/” and “Enter” (examine specific record)

For more comprehensive tutorial materials, please email me at [danielb@ncjustice.org](mailto:danielb@ncjustice.org).

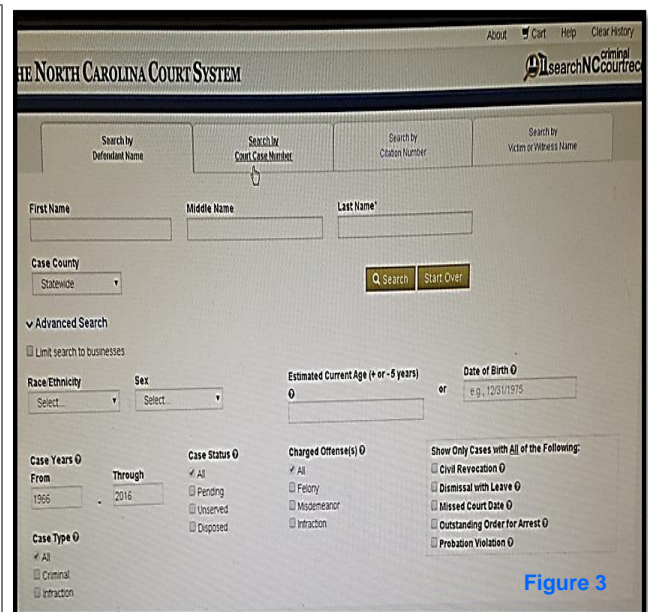


Figure 3



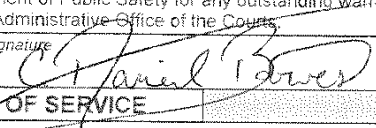
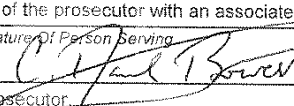
## How to Read an ACIS Report

Criminal background reports are often difficult to interpret, reflecting the complex nature of criminal proceedings. Particularly hard to interpret are records accessed directly from the North Carolina Court System using the Automated Criminal/Infractions System (ACIS). ACIS records are accessible at each local court house either by request or by using a public terminal (see FAQ 1). ACIS relies on codes and fields that are not intuitive. The picture tutorial below highlights the information and fields relevant to petitioning for an expunction of a criminal charge or conviction. Common ACIS codes are also provided below. On the next page is a petition form completed for the specific criminal record below.

## Common ACIS Abbreviations

CR	Criminal District Court	NP	No Probable Cause
CRS	Criminal Superior Court	OF	Offense Date
DC	Dismissed by Court	PJ	Prayer for Judgment Continued
DD	Dismissal - Deferred Prosecution	PO	Process/Probation Other
F	Felony Offense	PROB	Probation
M	Misdemeanor Offense	REST	Amount of Restitution Ordered by the Court
I	Infraction (non-criminal offense)	SENT	Sentence Length Imposed in Months, Days, Years
GL	A Plea or Finding of Guilty to a Lesser Offense	SI	Superseding Indictment
GU	A Plea of Finding of Guilty to the Offense	VD	Voluntarily Dismissed Without Leave (by DA)
JU	Disposed by a Judge	VL	Voluntarily Dismissed With Leave (may be Reinstated)
NG	Not Guilty	VER	Verdict

For additional system Code Definitions, see side two of FORM AOC-CR-314, located here: <http://www.nccourts.org/Forms/Documents/112.pdf>

<b>STATE OF NORTH CAROLINA</b>			File No. 98CR 000011	Scan No.(s) (official use only)	
WAKE County		In The General Court Of Justice <input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division			
<b>STATE VERSUS</b>		<b>PETITION AND ORDER OF EXPUNCTION UNDER G.S. 15A-145.5 (NONVIOLENT FELONY OR NONVIOLENT MISDEMEANOR)</b>			
Name And Address Of Petitioner (type or print) GEORGE THOMAS ANYBODY 123 MAIN STREET APT 5A DURHAM NC 26511		Name And Address Of Petitioner's Attorney For Expunction Petition DANIEL BOWES NC JUSTICE CENTER, (919) 861-2061 224 S. DAWSON STREET RALEIGH NC 27601			
Drvers License No. 987654321	State NC	Race WHITE	Sex M	G.S. 15A-145.5, -150	
Date Of Birth 01/01/1956	Full Social Security No. 123-45-6789				
<b>NOTE TO PETITIONER:</b> List the arresting agency and any State or local government agency that has a record of your case. You must provide complete information for each agency. The Clerk of Superior Court will send a copy of this order, if granted, to the agency name(s) and address(es) provided below. The Clerk will not provide addresses for you. Do not list the courts, the Department of Public Safety, the Division of Adult Correction, or the Division of Motor Vehicles; if the order is granted, those agencies will be notified automatically. Do not list any private entity, like a company that provides criminal background checks. The Clerk will not send a copy of this order to any entity that is not an agency of the State of North Carolina or one of its local governments. A private entity required to expunge records will be notified directly by the State or local agencies that distribute criminal justice information to that entity.					
Name And Address Of Arresting Agency RALEIGH POLICE DEPARTMENT 6716 SIX FORKS ROAD RALEIGH NC 27615		Name And Address Of Other Agency (if any) WAKE COUNTY SHERIFFS DEPT 330 S. SALISBURY STREET RALEIGH NC 27601		Name And Address Of Other Agency (if any)	
<input type="checkbox"/> Check here to indicate that additional agencies are identified on an attachment to this petition. <b>NOTE:</b> The attachment must include the county, file number(s), the name of the petitioner, and a statement that it is a list of additional agencies with a record of the case(s) to be expunged.					
File No.(s)	Date Of Offense	Date Of Arrest	Offense Description	Disposition	Date Of Disposition/Conviction
98CR 000011	06/01/1998	07/01/1998	(M) LARCENY	GUILTY	12/04/1998
98CR 000015	07/01/1998	07/01/1998	(M) POSSESSION OF STOLEN GOODS	GUILTY	12/04/1998
<b>PETITION/MOTION TO EXPUNGE</b>					
I hereby move for an expunction pursuant to G.S. 15A-145.5 and certify as follows: 1. I pled guilty to or was found guilty of the nonviolent felony(ies) and/or misdemeanor(s) listed above, and further certify that: a. No offense listed above is a Class A1 misdemeanor or more serious than a Class H felony. b. No offense listed above is among the exceptions in G.S. 15A-145.5(a) that are ineligible for expunction. c. This petition is being filed at least fifteen (15) years after the date(s) of conviction listed above or when any active sentence, period of probation, and post-release supervision has been served, whichever occurred later. 2. Other than the conviction(s) listed above, I have not been convicted of any felony or misdemeanor, other than a traffic violation. 3. I have attached to this petition the affidavits required by G.S. 15A-145.5(c).					
I certify that this petition and the required affidavits have been filed in this case and that the information set forth above is a complete and accurate statement of the information on file in the office of the Clerk of Superior Court. I hereby request and authorize a name-based State and national criminal record check by the NC Department of Public Safety, a search by the Department of Public Safety for any outstanding warrants or pending criminal cases, and a search of the confidential record of expunctions maintained by the NC Administrative Office of the Courts.					
Date 09/08/2014	Name (type or print) C. DANIEL BOWES	Signature 		<input type="checkbox"/> Petitioner <input checked="" type="checkbox"/> Petitioner's Attorney	
<b>CERTIFICATE OF SERVICE</b>					
I certify that a copy of this motion was served by: <input type="checkbox"/> delivering a copy personally to the prosecutor. <input checked="" type="checkbox"/> depositing a copy enclosed in a postpaid properly addressed envelope in a post office or official depository under the exclusive care and custody of the U.S. Postal Service, directed to the prosecutor. <input type="checkbox"/> leaving a copy at the office of the prosecutor with an associate or employee.					
Date Served 9/7/2014	Signature Of Person Serving 		Name Of Person With Whom Copy Left (type or print)		
<input type="checkbox"/> Service accepted by the prosecutor.					
Date Service Accepted	Signature Of Person Accepting Service		Name Of Person Accepting Service (type or print)		
<b>NOTE TO CLERK:</b> Regardless of when the reports are returned by the SBI and NCAOC, as provided on the reverse, the hearing may not be scheduled earlier than 30 days after service of the petition on the prosecutor.					
<b>REQUEST BY JUDGE</b>					
To The State Bureau Of Investigation, Attn: CHS Expungement Unit, P.O. Box 29500, Raleigh, NC 27626: Please prepare, certify on the reverse side, and attach to this Request any Criminal History Record Information (CHRI) and the results of a search for outstanding warrants or other pending criminal cases for the petitioner, then forward this Request with CHRI attached, confidentially to: Records Officer, Administrative Office of the Courts. To The Records Officer, Administrative Office of the Courts, P.O. Box 2448, Raleigh, NC 27602: Complete the report on the reverse side and return it, along with the information attached by the SBI, to the Clerk of Superior Court.					
Date	Name Of Presiding Judge (type or print)		Signature Of Presiding Judge		
AOC-CR-281, Rev. 1/15, © 2015 Administrative Office of the Courts (Over)					

910 WAKE  
DISPOSED: ICA INQUIRY 01 08CR 004777 FILM:  
WARRANT R S DOB/AGE CR A FILING DATE: 013008 NC  
[REDACTED] B M [REDACTED] DL#: [REDACTED] TRIAL DATE: 070708  
RALEIGH NC 27610 DEF ATTY: CSLR: [REDACTED] Y CSLR: [REDACTED] TYP: PM VRA:  
CHG/ARRN OFFN: M MISDEMEANOR LARCENY 14-72 (A)  
COMPLAINANT: [REDACTED] OTH ISSUED: 012808 SERVED: 012908  
ORFN DATE: 112107 ARRN DATE: MOTIONS DATE: 112908 DISP DATE: 070808  
CONT. D: 00 S: 01 C: 00 NR: 00 RSNCO: GANG REL: DV CV: N  
PLEA VER MOD FINE COSTS WCC REST JUDGE PAID TO-BE-PAID  
CONV OFFN: VD \$ \$ \$ \$ \$  
SENT LEN: - SENT TYPE: CONS F/JGMT: APPEALED TO SUPERIOR:  
PROB: WITHDRAWN: TRANS TO SUPERIOR:  
AREA CD: ACCD: HWY: V LIC: V TYP: APPELLATE:  
CDL: N CMV: N NAZ: N TRP/DIST: V ST: V TYP: APPELLATE:  
ARREST DATE: 012908 CHECK DIGIT: [REDACTED] SID: [REDACTED] LID:  
NEXT#: PE2 NAME INQUIRY ADDL CHARGES:

**NOTE:** Petition for expunction must be heard in same division (District (CR) or Superior (CRS)) as the original charge's final disposition. For charge occurring in both divisions, please see FAQ 11.

**NOTE:** Be sure to include the arresting agency information. It is a best practice to always include the local Sheriff's Department as they may have records of custody stemming from the arrest/charge.

**NOTE:** If applying for expunction of a misdemeanor conviction under 18, complete this section.

**NOTE:** If applying for expunction of a dismissed charge(s), complete this section.

**NOTE:** If applying for expunction of dismissed charge, mark this box unless the charge was dismissed due to completion of a diversionary program or conditional discharge

**STATE OF NORTH CAROLINA** File No. 08CR 004777 Scan No(s). (Official Use Only)

WAKE County In The General Court Of Justice  
 District  Superior Court Division

**STATE VERSUS**  
Name And Address Of Petitioner (Type Or Print)  
TYLER JOHN ANYONE  
126 MAIN STREET  
RALEIGH NC 27601  
G.S. 15A-145(a), 15A-146, 15A-150

Drivers License No. State Race Sex Name And Address Of Petitioner's Attorney For Expunction Petition  
[REDACTED] NC 27601 BLACK M

Date Of Birth 02/01/1985 Full Social Security No. 987-65-4321 Age At Time Of Offense  
Name And Address Of Arresting Agency Name And Address Of Other Agency (If Any) Name And Address Of Other Agency (If Any)  
RALEIGH POLICE DEPARTMENT WAKE COUNTY SHERIFFS DEPT  
6716 SIX FORKS ROAD 330 SOUTH SALISBURY STREET  
RALEIGH NC 27611 RALEIGH NC 27601

Check here to indicate that additional agencies are identified on an attachment to this petition. NOTE: The attachment must include the county, file number(s), the name of the petitioner, and a statement that it is a list of additional agencies with a record of the case(s) to be expunged.

File Nos.	Date Of Arrest	Offense Description	Date Of Offense	Disposition	Date Of Conviction
08CR 004777	01/29/2008 (M)	LARCENY	11/21/2007	VD	07/08/2008

**PETITION/MOTION TO EXPUNGE**

I hereby move for an expunction pursuant to G.S. 15A-145(a) and certify as follows:  
1. I was convicted of (a) misdemeanor(s), other than a traffic violation, the file number(s) of which is/are set out above.  
2. At the time the offense was committed, I was under the age of 18 (or under the age of 21 if the offense was misdemeanor possession of alcohol in violation of G.S. 18B-302(b)(1)).  
3. I have not previously been convicted of any felony or misdemeanor, other than a traffic violation.  
4. Those affidavits and statements required by G.S. 15A-145(a) are incorporated and are attached.  
5. I have no outstanding restitution orders, or civil judgments representing amounts ordered for restitution, against me.  
6. I have served a copy of this form on the district attorney.  
 7. There is a civil revocation record that resulted from the offense(s) I am seeking to expunge.

I hereby move for an expunction pursuant to G.S. 15A-146 and certify as follows:  
1. I was charged with (a) misdemeanor(s) or felony(ies) (or an infraction under G.S. 18B-302(i) prior to December 1, 1999), the file number(s) of which is/are set out above.  
2. The charge(s) listed above was/were disposed of by a dismissal, finding of not guilty or finding of not responsible.  
3. I have not previously been convicted of any felony.  
4. I have not previously received an expungement under G.S. 15A-145, -145.1, -145.2, -145.3, -145.4, or -145.5. I further (check one)  
 have not received a previous expungement under G.S. 15A-146.  
 have received a previous expungement under G.S. 15A-146, but the expungement occurred prior to October 1, 2005, and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offense(s) that is the subject of this motion.  
 5. There is a civil revocation record that resulted from the offense(s) I am seeking to expunge.

I certify that this petition under the statute identified above and all affidavits required under that statute have been filed in this case and that the information set forth above is a complete and accurate statement of the information on file in the office of the clerk of superior court. I hereby request and authorize a name-based State and national criminal record check by the NC Department of Public Safety and a search of the confidential record of expunctions maintained by the NC Administrative Office of the Courts.

This petition is not filed pursuant to G.S. 15A-145(a) and no charge listed above was dismissed as the result of compliance with a deferred prosecution agreement or a conditional discharge and dismissal. **NOTE TO CLERK:** If this box is checked, do not assess the \$175.00 fee.

Date 01/02/2014 Name (Type Or Print) TYLER JOHN ANYONE Signature *Tyler John Anyone*  Petitioner  Petitioner's Attorney

**REQUEST BY JUDGE**

To The State Bureau of Investigation, Attn: CHS Expungement Unit, P.O. Box 29500, Raleigh, NC 27626:  
Please prepare, certify on the reverse side, and attach to this Request any Criminal History Record Information (CHRI) for the petitioner, then forward this Request with CHRI attached, confidentially to: Records Officer, Administrative Office of the Courts.  
To The Records Officer, Administrative Office of the Courts, P.O. Box 2448, Raleigh, NC 27602:  
Complete the report on the reverse side and return it, along with the information attached by the SBI, to the clerk of superior court.

Date Name Of Presiding Judge (Type Or Print) Signature Of Presiding Judge

AOC-CR-264, Rev. 1/15 (Over)  
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**\*\*\*Petitioner Affidavit WORKSHEET—Please use this as a model for satisfying the statutorily required components of the affidavits specific to each type of expunction. It may be in the best interest of the petitioner to include in the affidavit further attestation and/or explanation of rehabilitation and/or good moral character—Please examine the “Filing Requirements” section (above) for the specific expunction for which petitioner is eligible, as well as the relevant statute. A blank affidavit is provided on the next page.\*\*\***

NORTH CAROLINA

\_\_\_\_\_ [A] \_\_\_\_\_ COUNTY

**A:** Print here the county where the conviction occurred

IN THE GENERAL COURT OF JUSTICE

\_\_\_\_\_ [N] \_\_\_\_\_ COURT DIVISION

\_\_\_\_\_ [B] \_\_\_\_\_

**B:** Print here the file number of the conviction. If petitioning for expunction of multiple convictions occurring in the same session of court, place additional file #s beneath this initial line.

Ex. 97 CR 014926  
97 CR 014927  
97 CR 014928

STATE OF NORTH CAROLINA,  
Plaintiff,

**N:** Print “District” or “Superior.” Expunction petition must be heard in the same court in which original disposition occurred. Typically, file no. with “CR” means disposition occurred in District, “CRS” means Superior.

vs.

) **DEFENDANT’S**  
) **AFFIDAVIT**

\_\_\_\_\_ [C] \_\_\_\_\_,

Defendant.

**C:** Print here Petitioner’s full name.

NOW COMES the Defendant, \_\_\_\_\_ [C] \_\_\_\_\_, who, after first being duly sworn, deposes and says:

1. I am the defendant in the above-captioned matter.
2. This sworn statement is made in support of my petition to expunge a charge from my criminal record.
3. The attached petition is a motion in the cause in the case wherein I was convicted.
4. I have been of good moral character and have not been convicted of [D, E, F, or G- depending on type of expunction—read below] \_\_\_\_\_

- D.** If seeking expunction under GS 15A-145.5, write in “any other felony, or any other misdemeanor other than a traffic violation.”
- E.** If seeking expunction under GS 15A-145.6, write in “any felony, or any misdemeanor other than a traffic violation, since the date of the prostitution conviction for which I am petitioning for expungement.”
- F.** If seeking an expunction under GS 15A-145 or GS 15A-145.1, write in “any felony, or other misdemeanor other than a traffic violation, during the 2-year waiting period.”
- G.** If seeking an expunction under GS 15A-145.4, write in “any felony, or other misdemeanor other than a traffic violation, during the 4-year waiting period.”

5. No restitution orders or civil judgments representing amounts ordered for restitution entered against me are outstanding.

This the \_\_\_\_\_ [H] \_\_\_\_\_ day of \_\_\_\_\_ [I] \_\_\_\_\_, 201 [J].

**K:** Your signature.

**H:** Day completed affidavit (must be same day notarized).

**I:** Month completed affidavit.

**J:** Year completed affidavit.

**L:** Print your name.

\_\_\_\_\_ [K] \_\_\_\_\_

\_\_\_\_\_ [L] \_\_\_\_\_, Affiant

Sworn to and subscribed before me

on this the \_\_\_\_\_ [M] \_\_\_\_\_ day of \_\_\_\_\_ [M] \_\_\_\_\_, 201\_\_\_\_\_

\_\_\_\_\_ [M] \_\_\_\_\_

Notary Public

My Commission Expires: \_\_\_\_\_ [M] \_\_\_\_\_

**M:** A Notary Public will need to complete this portion of the affidavit. For more information on finding a Notary Public, please visit the NC Secretary of State website here: <http://www.secretary.state.nc.us/NotaryPublic/Search>

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

\_\_\_\_\_ COURT DIVISION

\_\_\_\_\_ COUNTY

STATE OF NORTH CAROLINA, )  
 Plaintiff, )  
 vs. )  
 \_\_\_\_\_, )  
 Defendant. )

**DEFENDANT'S  
AFFIDAVIT**

NOW COMES the Defendant, \_\_\_\_\_, who, after first being duly sworn, deposes and says:

1. I am the defendant in the above-captioned matter.
2. This sworn statement is made in support of my petition to expunge a charge from my criminal record.
3. The attached petition is a motion in the cause in the case wherein I was convicted.
4. I have been of good moral character and have not been convicted of \_\_\_\_\_  
 \_\_\_\_\_
5. No restitution orders or civil judgments representing amounts ordered for restitution entered against me are outstanding.

This the \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
 \_\_\_\_\_, Affiant

Sworn to and subscribed before me  
on this the \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

\*\*\*Affidavit of Good Character WORKSHEET—Please use this as a guide—a blank affidavit is located on the next page\*\*\*

NORTH CAROLINA  
[A] COUNTY

A: Print here the county where the conviction occurred

IN THE GENERAL COURT OF JUSTICE  
[M] COURT DIVISION  
[B]

STATE OF NORTH CAROLINA,  
Plaintiff,  
  
vs.  
  
[C]  
Defendant.

M: Write "District" or "Superior." Expunction petition must be heard in the same court in which original disposition occurred. Typically, file no. with "CR" means disposition occurred in District, "CRS"

B: Print here the file number of the conviction. If petitioning for expunction of multiple convictions occurring in the same session of court, place additional file #s beneath this initial line.  
Ex. 97 CR 014926  
97 CR 014927  
97 CR 014928

AFFIDAVIT OF GOOD CHARACTER

C: Print here Defendant's full name.  
D: Print here Affiant's full name.

The Affiant, [D], after first being duly sworn, deposes and says:

- 1. I am a personal acquaintance of the Defendant in the above-captioned matter.
- 2. This statement is in support of the Defendant's petition to expunge a conviction from his/her criminal record.
- 3. I am not related to the Defendant by blood or marriage, nor am I related to other Affiant [E] by blood or marriage.
- 4. I have known the Defendant for [F] years.
- 5. I live in the same community as the Defendant.
- 6. I know the character and reputation of the Defendant in the community in which Defendant lives. Defendant's character and reputation in Defendant's community are good.

E: Print here the name of the other affiant who is attesting to the good character of defendant.

F: Print here the number of years affiant has known defendant.

This the [G] day of [H], 201 [I].

G: Day Affiant completed affidavit  
H: Month

I: Year

[J]  
[K], Affiant

J: Affiant Signature  
K: Affiant Printed Name

Sworn to and subscribed before me  
on this the [L] day of [L], 201 [L].  
[L]  
Notary Public  
My Commission Expires: [L]

L: A Notary Public will need to complete this portion of the affidavit. For more information on finding a Notary Public, please visit the NC Secretary of State website here:  
<http://www.secretary.state.nc.us/NotaryPublic/Search>

NORTH CAROLINA

IN THE GENERAL COURT OF JUSTICE

\_\_\_\_\_ COURT DIVISION

\_\_\_\_\_ COUNTY

STATE OF NORTH CAROLINA, )  
 Plaintiff, )  
 )  
 vs. )  
 )  
 \_\_\_\_\_, )  
 Defendant. )

**AFFIDAVIT OF  
GOOD CHARACTER**

The Affiant, \_\_\_\_\_, after first being duly sworn, deposes and says:

1. I am a personal acquaintance of the Defendant in the above-captioned matter.
2. This statement is in support of the Defendant’s petition to expunge a conviction from his/her criminal record.
3. I am not related to the Defendant by blood or marriage, nor am I related to other Affiant \_\_\_\_\_ by blood or marriage.
4. I have known the Defendant for \_\_\_\_ years.
5. I live in the same community as the Defendant.
6. I know the character and reputation of the Defendant in the community in which Defendant lives. Defendant’s character and reputation in Defendant’s community are good.

This the \_\_\_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
\_\_\_\_\_, Affiant

Sworn to and subscribed before me  
on this the \_\_ day of \_\_\_\_\_, 201\_.

\_\_\_\_\_  
Notary Public

My Commission Expires: \_\_\_\_\_

## SBI AND AOC INVOLVEMENT IN THE EXPUNCTION REVIEW PROCESS

The North Carolina State Bureau of Investigation and the North Carolina Administrative Office of the Courts have key roles in the process by which petitions for expunction are reviewed. By statute, the SBI is responsible for conducting a state and national background check to assist the court in determining whether the petitioner is eligible for expunction. In addition to the background checks, the SBI has adopted the practice of reviewing the petitions and criminal record reports and providing an “expunction checklist” to the presiding judge as a “courtesy” (see Figure 1). An “expungement checklist” indicating whether or not the SBI interprets the petition to be eligible for relief is sent directly to the presiding judge and could conceivably be challenged as ex parte communication. These checklists are especially problematic in counties where petitions are reviewed in chambers, often without notice to the petitioners’ attorneys. The checklist shown in Figure 1, for example, indicated the petitioner was not eligible to expunge her 16-year-old nonviolent felony conviction because 15 years had not passed since she completed her criminal sentence. This checklist led the presiding Superior Court judge to deny the petition without hearing. Upon reconsideration initiated by a

Rule 60 motion, the presiding judge was persuaded that the petitioner did satisfy the 15-year waiting period based on the text of the statute and ordered her felony expunged. It is also common for the SBI to refuse to enforce “controversial” expunction orders for an extended period of time before sending a letter to the court asking the presiding judge to reaffirm his or her interpretation of the law and intention to order the expunction.

The NC Administrative Office of the Courts is responsible for searching a confidential database of expunction orders and notifying the presiding judge if the petitioner has previously received an expunction. When it is determined a petitioner has previously received an expunction, the AOC attaches a confidential “match report” to the petition for the court’s review. There are circumstances in which an individual may be eligible for more than one expunction and inclusion of a “match report” does not necessarily indicate an individual is not eligible for the subsequent expunction. For example, a match report could indicate that an individual seeking expunction of a nonviolent misdemeanor conviction under G.S. §15A-145.5 has a previous expunction order for a dismissed charge(s). In such a circumstance, the previous expunction under G.S. §15A-146 would not disqualify the petitioner from subsequent expunction of a nonviolent offense under G.S. §15A-145.5. If possible, a petitioner’s attorney should review the match report because it may not include the information necessary to determine the type of expunction previously granted or may otherwise lead the court to mistakenly deny relief.

EXPUNGEMENT CHECKLIST			
15A-145.5 (NON-VIOLENT FELONY OR NON-VIOLENT MISDEMEANOR CONVICTIONS)			
As a courtesy, the SBI has completed this checklist based upon a preliminary review of the petitioner’s AOC request form and criminal history record information (CHRI). The original checklist has been forwarded to the Presiding Judge. The purpose of this check list is to highlight areas of concern to the Court. The Court will make the determination as to whether an individual qualifies for an expungement.			
<input type="checkbox"/> Unable to determine. <input checked="" type="checkbox"/> No. It appears the petition/record may not meet the following requirements.			
The Court will make the determination as to whether an individual qualifies for an expungement.	YES It appears requirements have been met	Unable to Determine	NO It appears requirements are not met
Petitioner filed with court where conviction(s) were rendered.			
All convictions sought were consolidated for trial and judgment.			
Petition clearly indicates what record(s) would be expunged and under what statutory authority.			
Petitioner seeks Expungement of conviction(s) no more serious than a non-violent class H felony and/or Class A1 misdemeanor.			
No offense listed is among the exceptions in N.C.G.S. 15A-145.5(a) that are ineligible for expunction.			
Appears that petitioner has no other misdemeanor or felony conviction(s) other than traffic violations.			
Petitioner has no outstanding warrants or pending criminal cases.			
At least 15 years have passed since the date of conviction, or active sentence, probation, or period of post release supervision was completed.			NO See Comments
<b>Comments</b> To the Presiding Judge: Please be advised N.C.G.S. 15A-145.5 addresses specific felony or class (a1) misdemeanor convictions when at least 15 years have passed since the date of conviction, or active sentence, probation, or period of post release supervision was completed. Please note that AOC and CCH records show that 15 years have not elapsed since the conviction was rendered and the probationary period was completed.			
<small>(If you are the petitioner, or the petitioner’s legal counsel, and you have received a copy of our correspondence to the Presiding Judge, please note that we cannot discuss the contents of this letter with you. An individual’s qualification for an Expungement will be determined solely by the Courts.)</small>			



## FREQUENTLY ASKED QUESTIONS

In petitioning for relief under North Carolina's expunction statutes, the following are frequently asked questions regarding terms, interpretations, and procedures:

### 1. How do I obtain a complete and accurate account of petitioner's criminal record?

- A. Gaining access to a complete and accurate copy of a person's criminal record is no easy task. There are several avenues to gain access to a criminal record, but each has its pros and cons:
- i. County Clerk of Court: A copy of an individual's criminal record may be obtained at the Clerk of Court's Office in the county in which he or she was charged with a crime. A criminal record provided by a Deputy Clerk of Court will only contain records of charges or convictions that occurred in that county. A certified copy of a criminal record is usually \$25. To access a certified copy of a criminal record, you must submit form AOC-CR-314, located here: <http://www.nccourts.org/Forms/Documents/112.pdf>. However, most clerks make an "uncertified" copy available for a fraction of that fee.
  - ii. Access to ACIS terminal: Direct access to the ACIS system is available through computer terminals located at local courthouses. Both attorneys and non-attorneys may conduct local and statewide name-based searches through the terminals, but be warned- the ACIS system was developed in 1981 and is notoriously hard to navigate. The Administrative Office of the Courts recently published a "citizen's guide" to conducting searches of the ACIS system, located here: [http://www.nccourts.org/Training/Documents/ACIS\\_Inquiry\\_RG.pdf](http://www.nccourts.org/Training/Documents/ACIS_Inquiry_RG.pdf)
  - iii. NC State Bureau of Investigation (SBI): An individual may request a copy of his or her statewide criminal record from the NC SBI. The individual must submit a "Right to Review" form, along with a completed fingerprint card. The cost of the request is \$14. Sheriff's departments typically charge \$25 to complete a fingerprint card. The "Right to Review" form is accessible here: [https://www.ncdps.gov/div/SBI/Forms/SBIRight-to-Review\\_FILLABLE.doc](https://www.ncdps.gov/div/SBI/Forms/SBIRight-to-Review_FILLABLE.doc)
  - iv. Adverse Action: When a prospective employer denies employment to a job applicant or otherwise takes "adverse action" based on an applicant's criminal history, the employer is usually required to provide to the applicant a copy of any criminal background report generated by a commercial provider. For more information, please visit the Fair Credit Reporting Act website here: <http://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0096-fair-credit-reporting-act.pdf>
  - v. Commercial Provider: An individual may obtain a criminal background report from a commercial provider at varying prices. These can provide state and federal criminal record information but are often inaccurate.

### 2. How do I identify and obtain the correct petition form?

- A. A prospective petitioner or petitioner's attorney must first determine the specific type of expunction for which a petitioner may be eligible because each type of expunction has a specific petition form. If using a digital version of this summary, one may use the hyperlinks contained under the "Filing Requirements" section for each expunction. Otherwise, one may use the form number (also contained in the "Filing Requirements" section) to obtain the specific petition form from the Clerk of Court's Office or the Administrative Office of the Court's (AOC) website, <http://www.nccourts.org/forms/formsearch.asp> (enter the form number, ex. AOC-CR-264, into the field labeled, "Form Number," and click "Search").

### 3. How do I file a completed petition for expunction?

- A. A petition for expunction must be filed in the county in which the charge or conviction for which the petitioner is seeking expunction occurred. Each county has particular petition procedures that can vary widely. In order to determine exactly how one should file a petition for expunction in that county, petitioner or petitioner's attorney should speak with a deputy clerk of court in that county. For example, some counties allow a petitioner to submit a petition to the Clerk of Court's Office once the petitioner has completed the sections requiring biographical information, arresting agency, offense description, and motion to expunge. In those counties, the Clerk of Court will then provide notice to the District Attorney (having them complete the "certificate of service" section of the petition form), obtain the presiding judge's signature, and mail the completed petition form and any accompanying affidavits to the SBI/AOC. However, in other counties, the petitioner is expected to not only complete the biographical, arresting agency, offense description, and motion to expunge sections, but is also expected to provide notice to the District Attorney (having them complete the certificate of service), obtain the presiding judge's signature, and mail the petition and any affidavits directly to the SBI/AOC. Similarly, a few counties require a certified copy of petitioner's criminal record to be submitted with the petition for expunction (see FAQ 1). That is all to say, whether a petitioner or a petitioner's attorney, one must learn from the Clerk of Court's Office the specific procedures for filing a petition for expunction.

#### **4. What is the overall process for petitioning for expunction of a criminal record?**

- A. Typically, a completed petition form is submitted to the Clerk of Court in the county in which the criminal incident giving rise to the criminal record for which petitioner is seeking expunction occurred. The petition is then submitted to the SBI and the AOC. As noted in FAQ 3, some counties require a petitioner to submit the completed petition form directly to the SBI/AOC. In either case, the SBI conducts a state criminal background check and obtains a federal background check from the Federal Bureau of Investigation. The AOC determines and indicates on the petition form whether a petitioner has previously received an expunction. The petition form and criminal background check are returned to the Clerk of Court's Office. As of January 1, 2016, this process took 4-5 months. However, recent increased staffing at the SBI is expected to significantly lower this wait time. Once a petition for expunction is returned to a Clerk of Court's Office, processes vary widely by county and by type of expunction. In some counties, the petition packet is provided directly to the presiding judge for all expunctions, and an order either granting or denying the petition is issued without a hearing. In other counties, notice is provided to the petitioner or petitioner's attorney when the packet is returned from the SBI/AOC and he or she is responsible for scheduling (also called "calendaring") a hearing before the presiding judge. And in yet other counties, the process varies by type of expunction—for example, petitions for expunction of dismissed charges are reviewed without a hearing, while petitions for expunction of nonviolent convictions are scheduled for hearing. Again, petitioner or petitioner's attorney will need to speak to the staff at the Clerk of Court's office in order to learn the processes specific to the county in which the petition for expunction is being filed. If an order for expunction is granted, the clerk of court erases the ACIS entry and then delivers a certified copy of the order to the NC Administrative Office of the Courts. Certified copies of the order are also delivered to the identified arresting agencies, the sheriff, the Division of Motor Vehicles, and the Department of Public Safety (both Combined Records and the State Bureau of Investigation's Expungement Unit), which delete the records from their respective databases. The Department of Public Safety also forwards the expunction order to the FBI. As of January 1, 2016, the time between the order being granted and the record actually being fully expunged is approximately 4-6 months—though, as described on

page 23, the State Bureau of Investigation, now housed within the Department of Public Safety, regularly delays enforcement of expunction orders it interprets to be erroneous.

## 5. What is a certificate of service?

- A. Most expunction statutes require notice of the petition for expunction to be provided to the Office of the District Attorney. Accordingly, many of the petition forms have a “certificate of service” section where a representative from the Office of the District Attorney certifies with their signature that the office was properly provided a copy of the petition for expunction. Petitioner should speak to the Clerk of Court’s office to determine the specific procedures for completing the certificate of release. Again, procedures vary by county—some counties, for example, allow the petition to be submitted to the Clerk of Court’s office and the Clerk of Court’s office notifies the DA, while other counties require petitioners to notify the DA. If petitioner or petitioner’s attorney is required to provide notice on the Office of the District Attorney, he or she will need to provide the representative a copy of the petition form and accompanying materials, and then have the representative complete the certificate of service section on the original petition form.

## 6. How do I obtain a copy of an expunction order?

- A. While some counties provide a certified copy of the order to the petitioner by mail and without a fee, other counties only provide a certified order upon request and/or upon payment of a fee of \$3 per certified copy pursuant to G.S. 7A-308(a)(9). Whether or not such a fee should apply to certified copies of expunction orders turns on one’s reading of G.S. 7A-308(b) which states: “the fees set forth in this section are not chargeable when the service is performed as a part of the regulation disposition of any action.” It is important that a petitioner or petitioner’s attorney immediately obtain a certified copy of the expunction order from the clerk as it is not possible to obtain a copy once the order is enforced. The only extremely narrow exception to this inaccessibility is where one is preparing to pursue civil liability for dissemination of expunged criminal history information against a third-party commercial provider under G.S. 15A-152 (see FAQ 17).

## 7. What if the county of disposition requires there to be a hearing on the petition?

- A. As previously mentioned, procedures for submitting a petition for expunction vary by county and type of expunction. So too vary the practices for reviewing the petitions. In many counties, upon their return from the SBI/AOC, petitions are reviewed by a judge without a formal hearing. In these counties, petitioners are not typically informed when the petition is returned from the SBI/AOC and prior to a judge’s review; instead, petitioners are informed only after a judge has granted or denied the petition for expunction. In other counties, petitioners must appear before the court in a formal hearing. In such circumstances, it is very important that the petitioner ask the Clerk of Court how to schedule the hearing on the petition. Such hearings are typically evidentiary, meaning the petitioner is given the opportunity to present evidence and arguments to demonstrate that he or she is eligible for expunction. Most of the expunction statutes require the court to grant the expunction if the client is eligible. However, NCGS 15A-145.5 *Expunction of Nonviolent Offenses* preserves the court’s discretion to grant or deny the petition, even where the individual is eligible for expunction. If the Office of the District Attorney opposes the petition, they will typically argue against the petition at this hearing.

## 8. What is the procedure for appealing or otherwise challenging an expunction order?

A. According to the North Carolina Administrative Office of the Courts, “the expunction statutes do not specify the procedure or deadline for appeals from expunction orders, so it is unclear whether such appeals follow the appellate rules for criminal cases or for civil cases—if criminal, it is further unclear whether or not an appeal from an expunction order entered in district court is appealed to the superior court for a de novo hearing or directly to the appellate division.” Most states treat expunctions as civil actions. In each of the district and superior courts where I have challenged the court’s denial of a petition for expunction, I have been allowed to do so under the Rules of Civil Procedure.

**9. Can an individual have an out-of-state or federal criminal record expunged under North Carolina’s expunction statutes?**

A. No. Only charges or convictions occurring under North Carolina law are eligible for expunction under North Carolina’s expunction statutes. Each state has its own statutes related to the expunction and/or sealing of criminal records.

**10. Will a federal or out-of-state criminal record make an individual ineligible for expunction of charges and/or convictions that occurred in North Carolina and would otherwise be eligible for expunction?**

A. Yes, in many circumstances. A conviction under the laws of the United States or other states is treated as an “other felony or misdemeanor conviction” for purposes of expunctions in NC. Accordingly, if a specific expunction statute requires that an individual have “no other convictions,” then a federal or other state conviction will likely make that individual ineligible for relief in North Carolina. In processing each petition for expunction, the SBI obtains a federal background report from the Federal Bureau of Investigation.

**11. How are Prayers for Judgment Continued (PJC) treated for purposes of expunction?**

A. There is no definitive answer to this question. The generally narrow nature of North Carolina’s expunction relief seems to have impacted the willingness of courts to blur the lines when it comes the nature of PJC for purposes of expunction. District and superior courts regularly treat PJC as convictions that are expungeable—meaning a PJC is potentially expungeable under NCGS 15A-145 – 15A-145.6, but is likely not expungeable under NCGS 15A-146 (expunction of dismissed charge). A related question of law is whether a prior or subsequent PJC makes an individual ineligible for expunction of a separate criminal conviction because many expunction statutes require the petitioner to have “no other conviction” or “no previous conviction.” In reviewing petitions in such circumstances, several district and superior courts have been persuaded to treat subsequent or prior PJC as something other than convictions and not disqualifying, and, thereby, found the petitioners to be eligible for expunctions of the traditional convictions. For more information on expunction of PJC, please see this article by the UNC School of Government: <http://nccriminallaw.sog.unc.edu/?p=1453>.

**12. What are “misdemeanor traffic violations”?**

A. Based on the use of the term “traffic violations” in Chapter 20 of the General Statutes, it is likely that a “misdemeanor traffic violation” should be interpreted to mean any misdemeanor offense contained in Chapter 20 of the General Statutes, including DUI. This interpretation has prevailed in several district and superior courts.

**13. When a charge appears in both District and Superior Courts (most commonly by a superseding indictment or appeal), is it necessary to submit petitions for expunction in both District and Superior Courts?**

A. No. In such circumstances, it is only necessary to file the petition for expunction in Superior Court.

**14. Is the relevant misdemeanor or felony classification for purposes of expunction the classification at the time of the conviction or the current classification of the offense?**

A. There is no definitive answer to this question. All misdemeanor and felony offenses are classified for purposes of sentencing. Felonies are classified from A to I, with the most serious offenses being Class A offenses. Misdemeanors are classified A1, 1, 2, and 3, with the most serious offenses being Class A1 offenses and the least serious offenses being Class 3 offenses. Understandably, eligibility for expunction of a criminal conviction is often based on the classification of the offense. However, the expunction statutes are silent as to whether the relevant classification is the classification of the offense at the time of the conviction or the classification of the offense at the time the petition for expunction is submitted. This issue is important because the classification of an offense can change as reforms are made to the law. Such shifts can occur by targeted changes to specific offenses as occurs in every session of the legislature, or, as last occurred in 1994, as part of wholesale reform of our state's sentencing laws. Accordingly, there will be a handful of circumstances where the classification at the time of conviction and at the time the individual petitions for expunction will be different and the petitioner's eligibility for expunction will depend entirely upon a court's interpretation of which classification is relevant. For example, conspiracy to commit armed robbery was a Class H offense in 1993, while conspiracy to commit armed robbery is now a Class E offense—a Class E felony is not eligible for expunction, while a Class H felony may be eligible for expunction. If petitioner would be eligible for expunction under one classification but not the other classification, please reach out to me for a general discussion of this issue at (919) 861-2061.

**15. At what age are individuals charged as adults in North Carolina?**

A. In North Carolina, juvenile jurisdiction ends after age 15, meaning individuals accused of criminal offenses are automatically charged as adults beginning at age 16 (note: individuals under age 16 accused of committing certain felony offenses may be charged as adults with the consent of the juvenile court). Accordingly, records of these charges and/or convictions are not sealed as juvenile adjudications; instead, these charges and/or convictions remain on individuals' criminal records unless expunged.

**16. What if an individual has dismissed charges eligible for expunction in multiple counties?**

A. An individual eligible for expunction of multiple dismissed charges each occurring within the same 12-month period but in different counties should simultaneously file separate petitions for expunction in each of the counties. Each of the petitions should provide notice of the multiple filings to the AOC by attaching copies of the other filings. The SBI recommends providing such notice via notes in the margins of each of the petitions. For example, in the margin of a petition submitted in Durham, the attorney would write "Petition for Expunction Under G.S. 15A-146 (File No. 14CR 01234) filed simultaneously in Orange County," and write "Petition for Expunction Under G.S. 15A-146 (File No. 14CR 04959) filed simultaneously in Durham County," in the margin of the petition submitted in Orange.

**17. If an individual receives an order of expunction for a criminal record, what is the likelihood of that criminal record ever showing up again in a criminal background check?**

- A. When a criminal record is expunged, the record is erased from the records of the court as well as any other state agencies (including the arresting agency). The Administrative Office of the Courts keeps a single file of all expunction orders that is only accessible in very limited circumstances set forth in NCGS §15A-151. Private companies that have contracted with AOC to purchase the information are also required to destroy any expunged records. Companies not doing so are potentially liable for damages under [GS §15A-152](#) (Civil Liability for Dissemination of Certain Criminal History Information). However, more and more cases are arising where the record is being sold or otherwise transferred so far downstream that the records are not being destroyed. Accordingly, there is a significant chance that despite the record being expunged it will at some point appear on a background report. In a circumstance where the expunged record does appear on a criminal background report, the petitioner may lawfully deny the charge or conviction occurred. However, many individuals in this circumstance have found it useful to explain that the criminal record has been expunged by court order.

**18. Can an employer inquire as to whether an individual has previously received an expunction?**

- A. According to North Carolina General Statutes §15A-153, a private employer or educational institution “shall not, in any application, interview, or otherwise, require an applicant for employment or admission to disclose information concerning any arrest, criminal charge, or criminal conviction of that applicant that has been expunged.” The statute also explains that an applicant need not answer such unlawful expunction inquiries if they do occur. For more information see here: <http://www.ncga.state.nc.us/Sessions/2013/Bills/Senate/PDF/S91v6.pdf>.

**19. What if an individual is not eligible for an expunction of his or her criminal record?**

- A. Many of the 1.5 million North Carolinians with criminal histories need and are deserving of relief from the collateral consequences of their criminal records. Unfortunately, due to the limited nature of expunction opportunities in NC, most of these individuals will not find meaningful relief under North Carolina’s expunction statutes. The following are potential alternative sources of legal relief:
- i. Title VII of the Civil Rights Act of 1964: Title VII prohibits employment discrimination based on race, gender, and other protected classes. While individuals with criminal records are not a protected class, Title VII protections have been partially extended to minorities with criminal records based on a disparate impact theory. For guidance on these protections, please visit here: [http://www.eeoc.gov/laws/guidance/arrest\\_conviction.cfm](http://www.eeoc.gov/laws/guidance/arrest_conviction.cfm). To learn more about filing a Title VII charge of discrimination, please visit here: <http://www.eeoc.gov/employees/charge.cfm>
  - ii. Title VIII of the Civil Rights Act of 1964: Title VIII prohibits housing discrimination based on race, gender, and other protected classes. While individuals with criminal records are not a protected class, Title VIII protections have been partially extended to minorities with criminal records based on a disparate impact theory. For information on how to file a complaint with the US Department of Housing and Urban Development, please see here: [http://portal.hud.gov/hudportal/HUD?src=/program\\_offices/fair\\_housing\\_equal\\_opp/complaint-process](http://portal.hud.gov/hudportal/HUD?src=/program_offices/fair_housing_equal_opp/complaint-process)
  - iii. Fair Credit Reporting Act: Employer and landlord use of criminal background checks are often regulated under the Fair Credit Reporting Act. For more information please visit here: <http://www.consumer.ftc.gov/sites/default/files/articles/pdf/pdf-0096-fair-credit-reporting-act.pdf>

Do you have general questions or comments? Please feel free to reach out to Daniel Bowes at (919) 861-2061 or [danielb@ncjustice.org](mailto:danielb@ncjustice.org).

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