

## The Current Pause on Automatic Expunctions in North Carolina

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September 2023

Effective July 21, 2023, North Carolina’s automatic expunction process for certain charges is suspended until July 1, 2024.<sup>1</sup> This extends the current pause, which was set to end on August 1, 2023.<sup>2</sup> G.S. §15A-146(4a) was enacted in June 2020 as part of the Second Chance Act<sup>3</sup> and provided for automatic expunction of certain criminal records. Specifically, it provided that charges are expunged by operation of law if all charges<sup>4</sup> in the case are disposed on or after December 1, 2021 and are dismissed without leave, dismissed by the court, or resulted in a finding of not guilty or not responsible.<sup>5</sup> In other words, the expunction would be automatic in these circumstances.<sup>6</sup> The law carved out an exception: no case with a felony charge that was dismissed pursuant to a plea agreement may be expunged under the new provision.<sup>7</sup>

The Second Chance Act charged the North Carolina Administrative Office of the Courts (“AOC”) with developing a procedure for automation of this process, which began on December 1, 2021<sup>8</sup> and was in place for eight months.<sup>9</sup> Within those eight months, nearly 400,000 cases became eligible for expungement.<sup>10</sup> When a record was marked for automatic expungement, the physical file was destroyed and the digital file was kept confidential.<sup>11</sup> However, the AOC noted that processing was “manually intensive”<sup>12</sup> and posed logistical problems for court officials.<sup>13</sup> Various entities also encountered “issues related to notice to all relevant agencies and file retention.”<sup>14</sup> For example, superior court clerks faced problems with providing access to records to defendants and non-court agencies (such as employers) who may need proof of expunction.<sup>15</sup>

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<sup>1</sup> AOC Court Changes/Automated Expunction, S.L. 2023-103, § 14.5.

<https://www.ncleg.gov/EnactedLegislation/SessionLaws/PDF/2023-2024/SL2023-103.pdf>.

<sup>2</sup> An Act to Make Various Changes Affecting the North Carolina Court System, S.L. 2022-47, § 1(a)-1(b), 2022 N.C. Sess. Laws 289, 289.

<sup>3</sup> Second Chance Act, S.L. 2020-35, § 3(a), 2020 N.C. Sess. Laws 234, 237-238.

<sup>4</sup> The law applies to misdemeanors, felonies, and infractions. *Id.*

<sup>5</sup> N.C.G.S. § 15A-146(a4)(2) (2020).

<sup>6</sup> *Id.*

<sup>7</sup> N.C.G.S. § 15A-146(a4) (2020).

<sup>8</sup> Second Chance Act, S.L. 2020-35, § 3(d), 2020 N. C. Sess. Laws 234, 239.

<sup>9</sup> An Act to Make Various Changes Affecting the North Carolina Court System, S.L. 2022-47, § 1(b), 2022 N.C. Sess. Laws 289, 289.

<sup>10</sup> See Minutes from the Second Chance Act Expunction Working Group at 3, N. C. ADMIN. OFF. OF THE CT. (September 13, 2022), <https://webservices.ncleg.gov/ViewDocSiteFile/75967>.

<sup>11</sup> See generally *id.* (noting that “current access [to expunged cases] is limited via an individual’s bar number.”).

<sup>12</sup> *Id.*

<sup>13</sup> *Id.* at 2.

<sup>14</sup> An Act to Make Various Changes Affecting the North Carolina Court System, S.L. 2022-47, § 2(a), 2022 N.C. Sess. Laws 289, 289.

<sup>15</sup> Minutes from the Second Chance Act Expunction Working Group at 4, N. C. ADMIN. OFF. OF THE CT. (September 13, 2022), <https://webservices.ncleg.gov/ViewDocSiteFile/75967>.

Pursuant S.L. 2022-47, § 2(a), a group of stakeholders, including the AOC, representatives from the Conference of District Attorneys, the State Bureau of Investigation, the NC Justice Center, the Division of Motor Vehicles, as well as attorneys representing clients seeking expunctions, court personnel, sheriffs, and members of the NC Second Chance Alliance convened to recommend solutions and report to the legislature.<sup>16</sup> The recommendations include lengthening the processing time for expunctions and increasing the types of court personnel who can access the information.<sup>17</sup> In the interim, the AOC will “maintain a record of any dismissed charges, not guilty verdicts, and findings of not responsible that...would be automatically expunged pursuant to G.S. 15A-146(a4).”<sup>18</sup> The files will remain confidential from the public.<sup>19</sup>

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<sup>16</sup> *Id.*

<sup>17</sup> N. C. ADMIN. OFF. OF THE CT., 2023 AUTOMATED EXPUNCTIONS REPORT (2023), <https://webservices.ncleg.gov/ViewDocSiteFile/75967>.

<sup>18</sup> An Act to Make Various Changes Affecting the North Carolina Court System, S.L. 2022-47, § 1(a), 2022 N.C. Sess. Laws 289, 289.

<sup>19</sup> *Id.* § 2(b). See G.S. § 15A-151(a) for a list of authorities to whom the file may be disclosed.