



Bill Summary: North Carolina Second Chance Act (SB 562, Sens. Britt, Daniel, McKissick)

What the new law does: The Second Chance Act (SB 562) was passed by the North Carolina General Assembly in June 2020. The new law allows people to petition the court for an expunction (also known as an expungement) of North Carolina state criminal charges that were dismissed, or for which they were found not guilty. It also allows for expunction of some North Carolina state juvenile convictions and “nonviolent misdemeanor” and “nonviolent felony” convictions. An expunction removes a criminal charge or conviction from a person’s criminal record.

Who the new law applies to: The law applies to people convicted of state crimes under North Carolina state law. The law does not allow for expungement of federal convictions or convictions from other states.

The following expunctions are permitted under the new law:

Juvenile convictions: The new law allows people who were under the age of 18 but charged as adults before the state’s “raise the age” law took effect on December 1, 2019, to file a petition for an expunction for certain misdemeanors and felonies. The law allows either the impacted person or the district attorney to file a petition upon the completion of the sentence if all the following are met:

1. The crime was committed before December 1, 2019, and the person was age 16 or 17 at the time of the offense;
2. Any active sentence, period of probation, and post-release supervision for that crime has been served;
3. The person has paid and fulfilled all restitution orders; and
4. The offense was a misdemeanor or Class H or I felony, but not a violation of the motor vehicle laws under Chapter 20 of the General Statutes (including any impaired driving offense defined in G.S. 20-4.01(24a) or (ii)) or any offense requiring sex offender registration, even if the person is not currently required to register (see Chapter 14, Article 27A of the General Statutes).

The petition must be filed in the court of the county where the person was convicted, and it must be served to the district attorney. The district attorney can object to the petition within 30 days and has to notify victims, if any, of the petition. Victims have the right to be present at the hearing, and their views must be considered by the court. If the court orders an expungement of the person’s record, the person can lawfully say, going forward, that they have not been convicted of that offense. The cost for filing a petition is \$175, unless the person is indigent.

Note: Expungement of these juvenile convictions does not mean that they cannot be used later on to enhance a sentence. Expunged juvenile records can still be considered a prior conviction and be used:

- To calculate prior record level if the person is convicted of a future crime



- To serve as a basis for indictment for a habitual offense under G.S. 14-7.1 or G.S. 14-7.26
- When the prior conviction raises the offense level of a future offense
- To determine eligibility for relief under conditional discharge pursuant to G.S. 90-96(a)
- When permissible in a criminal case under Rule 404(b) or Rule 609 of the North Carolina Rules of Evidence, related to evidence of prior criminal convictions.

Expunction of dismissed and acquitted charges: Starting December 1, 2020, district attorneys and impacted people can file a petition in court for expunctions for the following charges:

1. Dismissed charges for a misdemeanor or felony, or an infraction under G.S. 18B-302(i), committed prior to December 1, 1999
2. Acquitted charges (charges for which a person was found not guilty) for a misdemeanor or felony, or an infraction under G.S. 18B-302(i), committed prior to December 1, 1999.

Automatic expunction of dismissed and acquitted charges: Starting December 1, 2021, any dismissed or acquitted charges disposed on and after that date will be automatically expunged. Felonies that are dismissed as a result of a plea agreement cannot be expunged.

Expunction of nonviolent felony or misdemeanor convictions: Starting December 1, 2020, people may file a petition for an expunction of certain nonviolent felony or nonviolent misdemeanor convictions. A nonviolent felony or nonviolent misdemeanor conviction does **NOT** include any of the following offenses:

1. A Class A through G felony or a Class A1 misdemeanor;
2. An offense that includes assault as an essential element of the offense;
3. An offense requiring sex offender registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register;
4. Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1;
5. Any felony drug offense under G.S. 90 involving methamphetamines or heroin, or any felony offense for possession with intent to sell or deliver, or sale or delivery, of cocaine;
6. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c);
7. An offense under G.S. 14-401.16;
8. An offense under G.S. 14-54(a), 14-54(a1), or 14-56;
9. Any felony offense in which a commercial motor vehicle was used in the commission of the offense;
10. An offense involving impaired driving as defined in G.S. 20-4.01(24a); or
11. Any attempt to commit any of the above offenses.

If a person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court, then the multiple convictions will be treated as one, and the expunction order will apply to all of the convictions.

A person can file a petition for an expunction of one or more nonviolent misdemeanor convictions or one nonviolent felony convictions as described below:

1. For one nonviolent misdemeanor, five years after the date of the conviction or when any active sentence, period of probation, or post release supervision has been served, ***whichever occurs later***.
2. For more than one nonviolent misdemeanor, seven years after the person's last conviction, other than a traffic offense, or seven years after any active sentence, period of probation, or post release supervision has been served, ***whichever occurs later***.
3. For one nonviolent felony, 10 years after the date of the conviction or 10 years after any active sentence, period of probation, or post release supervision has been served, ***whichever occurs later***.

NOTE: A person **cannot** receive an expunction under the Second Chance Act for a crime that is committed after the date of a previous order for expunction of a conviction granted under the Second Chance Act. For example, if a person receives an expunction on January 15, 2021, for a prior conviction, but commits a new offense on January 15, 2022, that person cannot later receive an expunction for the offense committed in 2022.

The petition for expunction must include the following:

1. An affidavit by the petitioner stating that they are of good moral character and have not been convicted of any other felony or misdemeanors (not counting traffic violations) anywhere else in the United States during the applicable waiting period;
2. Verified affidavits about the moral standing of the petitioner from two people who are not related to the petitioner;
3. A statement that the petition is a motion in the cause for a case where the petitioner was convicted;
4. A completed application form that authorizes a background check (application forms will be made available by the courts by September 1, 2020); and
5. An affidavit by the petitioner stating that they have no outstanding restitution payments.

The petition must be filed in the court of the county where the person was convicted and served on the district attorney. The district attorney can object to the petition within 30 days (an additional 30 days may be granted to allow for an objection, if the district attorney shows good cause for the delay). The district attorney has to notify victims, if any, of the petition. Victims have the right to be present at the hearing, and their views must be considered by the court. The court can also call on probation officers for any additional investigation or verification of the person's conduct since the conviction.

The court may grant an expunction for one or more nonviolent misdemeanors if it finds that:

1. The person has not been granted an expunction prior to the date of any offense the person currently seeks to have expunged; The person is of good moral standing;
2. The person has no outstanding warrants, pending criminal cases, or restitution;
3. The person has had no other felony or misdemeanor convictions, not including traffic violations, during the five-year or seven-year waiting periods;
4. The person meets one of the following criteria:
 - a. For an expunction of one nonviolent misdemeanor: the person has no convictions for any other felony or misdemeanor, other than a traffic offense, OR

- b. For an expunction of more than one nonviolent misdemeanor: the person has no convictions for a misdemeanor or a felony that is excluded under this law (see page 2 of this factsheet for the list); and
5. The person is eligible for an expunction and has completed the applicable five-year or seven-year waiting period.

The court may grant an expunction for one nonviolent felony if it finds that:

1. The person has not been granted an expunction prior to the date of any offense the person currently seeks to have expunged;
2. The person is of good moral character;
3. The person has no outstanding warrants or pending criminal cases, or restitution;
4. The person has had no other felony or misdemeanor convictions, not including traffic violations, during the 10-year waiting periods;
5. The person has no convictions for a misdemeanor that is excluded under this law (see the list on page 2 of this factsheet), **or** any other felony offense; and
6. The person is eligible for an expunction and has completed the applicable 10-year waiting period.

If the court denies the petition, it must provide a reason for the denial.

NOTE: FAMM cannot provide legal advice, representation, or referrals to attorneys. If you or your loved one need help seeking an expunction of a conviction under the Second Chance Act, you should speak with an attorney licensed to practice in the state of North Carolina.