

LAWS ENACTED IN 2013-2014 DEALING WITH RELIEF FROM THE COLLATERAL CONSEQUENCES OF A CRIMINAL CONVICTION

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[www.nacdl.org/rightsrestoration¹](http://www.nacdl.org/rightsrestoration)

I. GENERAL RELIEF SCHEMES

Arkansas: Effective January 1, 2014, the Comprehensive Criminal History Sealing Act of 2013 consolidated and clarified Arkansas' patchwork of overlapping laws on judicial expungement and sealing, some of which dated back to the 1970's. See Ark. Code Ann. § 16-90-1401, et seq. Authorities for diversionary dispositions leading to sealing (including deferred adjudication) were preserved for persons sentenced to probation, first felony offenders, and juveniles. The new law also extended the possibility of sealing to certain minor felony convictions after a five-year waiting period. § 16-90-1401. For misdemeanors and nonconviction records there is a presumption in favor of sealing, and for felonies the court must make certain findings relating to rehabilitation. A person whose record has been sealed under this subchapter shall have all privileges and rights restored, and the conviction "shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the person that was sealed does not exist." § 16-90-1417(b). Sealing does not restore the right to carry a firearm if that right was removed as the result of a felony conviction.

Colorado: In 2013 Colorado enacted a broad menu of new relief authorities and expanded old ones. These new laws enlarged courts' authority to seal records of drug convictions, and cases in which no conviction resulted. Colo. Rev. Stat. § 24-72-308.1 et seq. In addition, persons convicted of less serious felony drug offenses (whether by plea or trial) with no more than one prior were allowed to apply to have their convictions vacated and reduced to a misdemeanor upon successful completion of probation. 18-1.3-103.5. Prosecutors were authorized to establish pretrial diversion programs. § 18-1.3-101. In addition, courts imposing a non-prison sentence were granted new authority to enter an "order of collateral relief" at sentencing, dispensing with collateral consequences "for the purpose of preserving or enhancing the defendant's employment or employment prospects and to improve the defendant's likelihood of success" while serving the non-prison sentence. See subsection 1 of the substantially identical provisions of Colo. Rev. Stat. §§ 18-1.3-107 (sentencing alternatives), 18-1.3-213 (probation), and 18-1.3-303 (community corrections).

Also during 2013 the Colorado legislature directed a general review of agency licensing requirements, Colo. Rev. Stat. § 24-34-104(9), and barred introduction of an employee's criminal record in a civil action for negligent hiring if "[t]he nature of the criminal history does not bear a direct relationship to the facts underlying the cause of action." § 8-2-201(b). The year before, in 2012, state agencies and licensing agencies were barred from performing a

¹ A fuller description of the laws identified in this survey memo can be found in the state-by-state profiles of relief mechanisms posted on the NACDL website at www.nacdl.org/rightsrestoration.

background check “until the agency determines that an applicant is a finalist or makes a conditional offer of employment to the applicant.” Colo. Rev. Stat. § 24-5-101.

Delaware: In May 2014 the Delaware legislature amended § 711 of Title 19 of the Delaware Code to make it an unlawful employment practice for public employers to inquire into or consider the criminal record, criminal history or credit history or score of an applicant “during the initial application process, up to and including the first interview.” Del. Code Ann. tit. 19, § 711(g)(1). In addition, a public employer may inquire into or consider an applicant’s criminal record “only after it has determined that the applicant is otherwise qualified and has conditionally offered the applicant the position.” § 711(g)(2). Inquiry is limited to felonies within 10 years from release from custody (or sentencing if never in custody). In connection with any decision regarding employment, a public employer “shall consider” the following factors in evaluating the candidate or employee and the results of any criminal history inquiry: “(A) The nature of the crime and its relationship to the duties of the position sought or held; (B) Any information pertaining to the degree of rehabilitation and good conduct, including any information produced by the candidate or employee, or produced on his or her behalf; (C) Does the prospective job provide an opportunity for the commission of a similar offense(s)?; (D) Are the circumstances leading to the offense(s) likely to reoccur?; (E) How much time has elapsed since the offense(s). § 711(g)(3). The law does not apply to police force, the Department of Correction, or any position where federal or state law requires or expressly permits the consideration of an applicant’s criminal history. § 711(g)(4).

The law also amended Chapter 69 of Title 29 of the Delaware Code by adding a new section 6909B titled Fair Background Check Practices, providing that the state will do business only with contractors “that have adopted and employ written policies, practices and standards that are consistent with the requirements of § 711(g) of Title 9.” Del. Code Ann. Tit. 29, § 6909B(a). Agencies are directed to review all contractors’ background check policies for consistency with the policies of the State as expressed in § 711(g) of Title 9, and to consider background check policies and practices among the performance criteria in evaluating a contract. These requirement “shall not apply where a criminal background check or credit check is a requirement of State or federal law for a particular class of services.” § 6909B(b) and (c).

Indiana: A comprehensive new law enacted in May 2013 authorizes “expungement” of all records except those involving serious violence and sexual offenses, after a waiting period ranging from three to ten years. It also authorizes “sealing” of minor offenses and non-conviction records. *See* Ind. Code § 35-38-9. The records of convictions that have been expunged “remain public,” although they must be “clearly and visibly marked or identified as being expunged.” § 35-38-9-7. After a record is sealed, even a prosecutor may not access the records without a court order. § 35-38-9-1(d). It is unlawful discrimination for any person to refuse to employ, admit or license a person because of a conviction or arrest record that has been expunged or sealed, and a person may be questioned about a previous criminal record only in terms that exclude expunged convictions or arrests. § 35-38-9-10(a) and (c). Expunged convictions are not admissible as evidence of negligence in a civil action against a person who relied on the expungement order, § 35-38-9-10(f) and (g), and convictions that have been expunged may not be reported by credit reporting companies. *See* Ind. Code § 24-4-18-6(a).

Certain minor felonies may be converted to Class A misdemeanors upon entry of judgment on a one-time basis, or three years after imposition of sentence (DV and child pornography offenses are ineligible), and are then eligible for sealing. Ind. Stat. § 35-50-2-7. A petitioner may seek to expunge more than one conviction at the same time, but may file only one petition in the petitioner's lifetime – except that if a petition is denied on the merits then a subsequent petition covering some or all of the convictions in the original petition may be filed after three years. § 35-38-9-9(h), (i) and (j). The Indiana courts have published sample petitions for expungement at <http://www.in.gov/judiciary/2706.htm>.

Credit reporting companies: In 2012 a new chapter 24-4-18 was added to the Indiana Code to restrict criminal history information that may be reported by a “criminal history provider” (background screening company). As subsequently amended twice in 2013, this chapter prohibits reporting non-conviction records and minor conviction records, and records that have been expunged or sealed. The Attorney General may enforce sections 6 and 7 through injunction and fines, and a private individual injured by a violation of these sections may recover damages, court costs and attorney fees. See § 24-4-18-8.

Missouri: Under a 2012 law, sentencing courts are authorized to expunge bad check convictions (both felony and misdemeanor) and certain public order misdemeanors (trespassing, gambling, disturbing the peace). Mo. Rev. Stat. § 610.140. The eligibility waiting period for misdemeanors is 10 years, for felonies 20 years from completion of sentence. § 610.140(5). Expunged conviction may be used to enhance subsequent sentence, and be given predicate effect. § 610.140(7). A person granted an expungement shall disclose any expunged offense when the disclosure of such information is necessary to complete any application for a professional license, any license or employment relating to alcoholic beverages, or employment with any state-operated lottery, or any emergency services provider, including any law enforcement agency. “Notwithstanding any provision of law to the contrary, an expunged offense shall not be grounds for automatic disqualification of an applicant, but may be a factor for denying employment, or a professional license, certificate, or permit.” § 610.140(8).

New Jersey: Under the 2014 Opportunity to Compete Law, most public and private employers with more than 15 employees (over a minimum of twenty calendar weeks) are required to delay inquiry into criminal history until after a conditional offer of employment has been made. The bill and its exceptions is described at http://www.njisj.org/wp-content/uploads/2014/03/1_Opportunity-to-Compete-Act-Explanatory-Materials-Summary-Myths-Realities.pdf. The law carves out exceptions, including but not limited to jobs in law enforcement and the judiciary, jobs for which criminal checks are required by law, and jobs for which lack of prior record is required for licensing or similar purposes. Beyond those narrow exclusions, employers face significant financial penalties for violating the law. Under Sections 5 and 6 of the new law, covered employers may consider most convictions only for ten years after sentencing or release from imprisonment, disorderly offenses for five years, and may not consider at all non-conviction records, expunged convictions, and juvenile adjudications. Certain specified serious violent offenses may be considered indefinitely. Under Section 8(a) an employer is given guidance in evaluating a criminal record, including the extent of the individual’s rehabilitation, time elapsed since conviction, and the responsibilities of the job. If adverse action is taken based upon conviction record, the employer “shall certify in writing its reasonable consideration of the

factors set forth in subsection a. of this section.” Under Section 14, negligent hiring liability based in whole or part on an employee’s criminal record is limited to gross negligence.

Tennessee: Prior to 2012, Tennessee law did not provide for expungement of adult convictions. Tennessee courts are now authorized to grant expungement of convictions for certain less serious non-violent offenses. *See* 40-32-101(g), *amended by* 2012 Tennessee Laws Pub. Ch. 1103 (adding subsection (g) to Tenn. Code Ann. § 40-32-101). The effect of expungement is to restore persons to the position they occupied prior to arrest or charge, and thus persons whose records have been expunged may properly decline to reveal or acknowledge existence of charge. *See* Tenn. Code Ann. § 40-32-101(g)(14)(B)-(C)). Expungement restores firearms privileges even for drug and violent offenders. *See* § 40-32-101(g)(15)(B). In addition, effective May 2013, a pardon may serve as grounds for expungement, and thus pardon now restores firearms privileges. *See* Tenn. Code Ann. § 40-29-105(h); *see also* *Blackwell v. Haslam*, 2013 WL 3379364 (Tenn. Ct. App. 2013) (*Blackwell II*) (remanding for consideration whether Georgia pardon restoring firearms privileges should be given full faith and credit in Tennessee, in light of new Tennessee law authorizing expungement of pardoned convictions).

Vermont: On June 10, 2014, the Governor of Vermont signed the Uniform Collateral Consequences of Conviction Act, making Vermont the first state in the Nation to enact this scheme into law. See Act 181, 13 V.S.A. Chapter 231. Its text of the bill can be found at <http://www.leg.state.vt.us/docs/2014/Acts/ACT181.pdf>. This law, which will become effective January 1, 2016, authorizes courts to issue orders relieving collateral sanctions imposed under the laws of Vermont, to benefit those convicted and sentenced under Vermont law and under the laws of other jurisdictions.

- *Order of Limited Relief* - Under 13 V.S.A. § 8010, the sentencing court is authorized to issue an order dispensing with “one or more mandatory sanctions related to employment, education, housing, public benefits, or occupational licensing,” if the court finds that the individual has established by a preponderance of the evidence that granting the petition “will materially assist the individual” in obtaining a benefit in one of these areas, that the individual has substantial need for the relief requested in order to live a law-abiding life; and that granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual.
- *Certificate of Restoration of Rights* – Under § 8011, a court may issue a certificate relieving all but certain specified collateral sanctions five years after sentencing or release from incarceration.

Sanctions not affected include sex offender registration, driver’s license suspensions and revocations, and law enforcement employment. § 8012(a). Serious crimes, including drug trafficking, are not eligible for relief. § 8012(b). Under § 8014, an order of limited relief or a certificate of restoration of rights may be introduced as evidence of a person’s due care in a judicial or administrative proceeding alleging negligence or other fault. Pardon and other relief afforded convictions from other jurisdictions is given the same effect in Vermont as it has in the jurisdiction that granted it. § 8009(d) and (e).

II. CERTIFICATES OF RESTORATION OF RIGHTS

Ohio: Certificate of Qualification for Employment: An individual who has been convicted of or pleaded guilty to an offense who is subject to a "collateral sanction" barring him from a particular occupation or license, and who has fully discharged his sentence, may after a short eligibility waiting period apply to the court of common pleas in the county of his residence for a "certificate of qualification for employment" (CEQ) that will provide relief from the sanction and allow him to be considered on the merits. *See Ohio Rev. Code Ann. § 2953.25.* A CQE has the effect of lifting the "automatic bar" of most collateral sanctions imposed under Ohio law. *Ohio Rev. Code Ann. §§ 2953.25(B)(1)-(2).* *See also § 2953.25(D)* (CEQ "lifts the automatic bar of a collateral sanction, and a decision-maker may consider on a case-by-case basis whether to grant or deny the issuance or restoration of an occupational license or an employment opportunity, notwithstanding the individual's possession of the certificate"). The standard for issuing a certificate is whether the individual has established by a preponderance of the evidence that (a) granting the petition will materially assist in obtaining employment or occupational licensing; (b) the individual has a substantial need for the relief in order to live a law-abiding life; and (c) granting the petition would not pose an unreasonable risk to the safety of the public or any individual. *Ohio Rev. Code Ann. § 2953.25(C)(3).* The certificate is "presumptively revoked" if the individual is convicted of or pleads guilty to a felony offense committed after issuance of the certificate. § 2953.25(H).

Rhode Island: Certificate of recovery & re-entry: Effective July 1, 2014, a person with no more than one non-violent felony conviction may apply to the Parole Board for a "certificate of recovery & re-entry" which may "serve to relieve the petitioner, in appropriate cases, of some of the collateral consequences resulting from his or her criminal record." R.I. Gen. Laws § 13-8.2-1. Specifically, the certificate may "serve as one determining factor as to whether the petitioner has been successful in his or her rehabilitation." See also § 13-8.2-2(5)(a) certificate "shall serve as one determining factor, consistent with concerns of public safety, of the person's ability to obtain employment, professional licenses, housing and other benefits and opportunities. Provided, further, that said instrument shall serve as a determination that the person receiving it has successfully achieved his or her recovery & re-entry goals as provided for in § 13-8.2-4.") Eligibility criteria are established in § 13-8.2-2(4)(no more than one felony conviction) and (8) (violent crimes ineligible). The "minimum period of recovery & re-entry" is one year where the most serious conviction is a misdemeanor, and three years for a non-violent felony. The waiting period "shall be measured either from the date of the payment of any fine imposed upon him or her, or from the date of his or her release from the institutional facility, custody by parole or home confinement, whichever is later." The certificate does not result in expungement or sealing, or limit the procedure for applying for a pardon. § 13-8.2-6.

Note: The judicial relief schemes recently enacted in Indiana and Vermont, described in Part I of this memo, are similar to these and other certificate schemes.

III. BAN-THE-BOX LAWS

In 2013 and 2014, **California, Delaware, Illinois, Maryland, Minnesota, Nebraska, New Jersey, and Rhode Island** all passed new state-wide “ban-the-box” legislation.² The phrase refers to the currently popular way of imposing systemic limits on consideration of conviction in employment by prohibiting inquiry into an individual’s criminal history until after an opportunity for an interview has been granted or after a decision to offer employment has been reached. As of August 2014, ban-the-box laws had been enacted state-wide in thirteen states³ and adopted by more than fifty cities and counties.⁴ In addition, Governor Quinn of Illinois issued an administrative order removing inquiries into applicants’ criminal history on state employment applications. In five states the policy extends to private as well as public employment,⁵ and Colorado extends the bar to licensing

² New Jersey’s “Opportunity to Compete” law applies to both public and private employers with 15 or more employees; in addition to limiting the timing of inquiry, it imposes standards for consideration of conviction, bars consideration of nonconviction records and expunged/pardoned convictions. *See A1999* (August 2014). California, Delaware, Maryland, and Rhode Island applied a ban-the box rule to public employment. *See Cal. Lab. Code § 432.9(a)* (enacted by A.B. 218 (2013)) (prohibiting inquiry into criminal history of applicants for public employment until the “agency has determined the applicant meets the minimum employment qualifications”); Delaware (*Del. Code Ann. tit. 19, § 711(g)*) (a public employer may inquire into or consider an applicant’s criminal record “only after it has determined that the applicant is otherwise qualified and has conditionally offered the applicant the position”); Md. Code Ann., State Pers. & Pens. § 2-203 (enacted by S.B. 4 (2013)) (no inquiry by public employer until applicant has an opportunity for an interview); R.I. Gen. Laws. § 28-5-7(7) (as amended by 2013 Rhode Island Laws Ch. 13-309 (13-H 5507A)). Colorado extends its bar to licensing agencies. Colo. Rev. Stat. § 24-5-101. Minnesota extended to private employers its existing ban-the-box law prohibiting inquiry by public employer until applicant is selected for an interview or made conditional offer of employment. *See Minn. Stat. § 364.021* (as amended by 2013 Minn. Sess. Law Serv. Ch. 61 (S.F. 523)). Illinois’ law, signed by Governor Quinn in 2014, applies only to private employers with more than 15 employees. 30 ILCS 105/5.855. Governor Quinn’s Executive Order remains in effect for Illinois state agencies.

³ The thirteen states are Colorado (Colo. Rev. Stat. § 24-5-101), California (Cal. Lab. Code § 432.9(a) (enacted by A.B. 218 (2013)), Connecticut (Conn. Gen. Stat. § 46a-80(b)), Delaware (*Del. Code Ann. tit. 19, § 711(g)*), Hawaii (*Haw. Rev. Stat. § 378-2.5(b)*), Illinois (30 ILCS 105/5.855), Maryland (Md. Code Ann., State Pers. & Pens. § 2-203), Massachusetts (Mass. Gen. Laws ch. 151B, § 4(9 ½)), Minnesota (Minn. Stat. § 364.021), Nebraska, §12 of LB 907 (2014); New Jersey, A1999 (2014); New Mexico (N.M. Stat. Ann. § 28-2-3), and Rhode Island (R.I. Gen. Laws. § 28-5-7(7)).

⁴ The National Employment Law Project keeps an updated tally of local governments that have adopted ban-the-box laws and policies, as well as pending initiatives to remove barriers to hiring people with a criminal record. *See Nat'l Emp't Law Project, Seizing the “Ban the Box” Momentum to Advance a New Generation of Fair Chance Hiring Reforms* (August 2014), <http://www.nelp.org/page/-/SCLP/2014/Seizing-Ban-the-Box-Momentum-Advance-New-Generation-Fair-Chance-Hiring-Reforms.pdf?nocdn=1>. Ban-the-box laws and policies have now been implemented in many of the nation’s largest cities including Atlanta, Baltimore, Boston, Chicago, Philadelphia, and Washington, D.C. *Id.*

⁵ *See Haw. Rev. Stat. §§378-2.5(b)* (prohibiting inquiries into arrest and conviction records before an employee receives a conditional offer of employment, which may be withdrawn only if a conviction within the previous ten years “bears a rational relationship to the duties and responsibilities of the position”); Mass. Gen. Laws ch. 151B, § 4(9 ½)(public and private employers prohibited from inquiring into criminal records on an initial job application, unless the particular job is one for which a convicted person is at least presumptively disqualified by law, or the employer “is subject to an obligation imposed by any federal or state law or regulation not to employ persons, in either 1 or more positions, who have been convicted of 1

agencies.⁶ The intent of these limited disclosure requirements is to allow applicants to be judged by their skill, character, and qualifications without regard to their criminal history. In theory, at least, if an employer gets to the point of offering someone a job, the fact that the employer has had a chance to get acquainted with the person will put their conviction into some perspective. Additionally, elimination of the application-stage inquiry blunts the “chilling effect” that often discourages people with a record from applying at all. As discussed in Chapter 6 of the 2013 edition, the Equal Employment Opportunity Commission listed “banning the box” as a “best practice” in its updated guidelines on the consideration of arrest and conviction records in employment decisions under Title VII of the Civil Rights Act of 1964.⁷

or more types of criminal offenses”); Minn. Stat. § 364.021 (as amended by 2013 Minn. Sess. Law Serv. Ch. 61) (“A public or private employer may not inquire into or consider or require disclosure of the criminal record or criminal history of an applicant for employment until the applicant has been selected for an interview by the employer or, if there is not an interview, before a conditional offer of employment is made to the applicant.”); New Jersey, A1999 (2014) (Opportunity to Compete law applies to all employers with 15 or more employees); R.I. Gen. Laws. § 28-5-7(7) (as amended by 2013 Rhode Island Laws Ch. 13-309 (13-H 5507A)) (no inquiry into criminal history by public or private employer until first interview).

⁶ Colo. Rev. Stat. § 24-5-101(3)(b)(state agencies and licensing boards may not perform a background check “until the agency determines that an applicant is a finalist or makes a conditional offer of employment to the applicant”).

⁷ EEOC, Enforcement Guidance on the Consideration of Arrest and Conviction Records in Employment Decisions Under Title VII of the Civil Rights Act of 1964, as Amended, 42 U.S.C. § 2000e et seq., No. 915.002, § V(B) (3) (April 25, 2012), http://www.eeoc.gov/laws/guidance/upload/arrest_conviction.pdf. (“As a best practice, and consistent with applicable laws, the Commission recommends that employers not ask about convictions on job applications and that, if and when they make such inquiries, the inquiries be limited to convictions for which exclusion would be job related for the position in question and consistent with business necessity.”). The EEOC Guidelines are reprinted in the Appendix.

CHART #4 - JUDICIAL EXPUNGEMENT, SEALING, AND SET-ASIDE

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-Conviction records
AL						Delinquency adjudications (with exceptions) sealed after final discharge or court order if no pending criminal proceedings. May petition to have records destroyed five years after age of majority. Ala. Code §§ 12-15-136, 12-15-137.	Effective July 1, 2014 courts may expunge nonconviction records of non-violent felonies and misdemeanors, including cases where charges dismissed. See also Ala. Code § 41-9-625 (authority to delete arrest records from rap sheets within 30 days of release from custody)
AK			Court may suspend imposition of sentence and “set aside” conviction after successful completion of probation for certain offenses (Alaska Stat. § 12.55.085), but no expungement. No predicate, but limited use for enhancement of sentence.			Court seals most juvenile records within 30 days of 18 th birthday or court’s release of jurisdiction, whichever is later. If charged as adult, most juvenile records sealed five years after completed sentence or after records made public. Alaska Stat. §§ 47.12.030, 47.12.300.	Effective October 1, 2014, records of criminal cases in which a person was acquitted or had charges dismissed are confidential. Alaska Stat. § 22.35.030. Sealing also for mistaken identity or false accusation if proven beyond reasonable doubt. Alaska Stat. § 12.62.180(b).
AZ	“Set-aside” upon discharge for all but violent and sex offenses. Relieves collateral consequences, but conviction must be disclosed. Predicate. Ariz. Rev. Stat. Ann. § 13-907.					If 18 years or older, may apply to set aside juvenile delinquency adjudication upon discharge from probation or absolute discharge for certain offenses. Yes predicate. Ariz. Rev. Stat. §§ 8-348; 8-207, 13-501.	Non-conviction records may not be sealed or expunged but may be amended to note person cleared of any arrests or indictments. Ariz. Rev. Stat. § 13-4051.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

AR		Misdemeanors eligible for sealing immediately after completion of sentence; felony convictions eligible after 5 yrs. (if no more than one prior felony). Serious violent and sexual offenses ineligible. Sealed conviction “shall be deemed as a matter of law never to have occurred, and the person may state that the underlying conduct did not occur and that a record of the person that was sealed does not exist.” Predicate effect. Ark Code Ann. § 16-90-1401 et seq.		If ineligible for sealing may seek pardon, which results in sealing for all but a few serious offenses. Ark Code Ann. § 16-90-1411.	Offenders convicted of non-violent felony committed when under 18 years old may petition for sealing. Ark. Code Ann. § 16-90-602.	Arrest records may be sealed if no charges are filed within one year, §16-19-1409, and records in which charges are dismissed or no conviction is obtained. § 16-90-1410.
CA	Courts may issue certificates of rehabilitation, which affect consideration for employment. See Cal. Bus. & Prof. § 480(b) and chart #5.	Set-aside for probationers, misdemeanants, and minor felony offenders – rights restored and disabilities removed, may be used as predicate offense and disclosed in certain contexts. Deferred sentencing for felony convictions, treated as misdemeanors following successful completion of probation. No sealing except for certain underage misdemeanants. Predicate effect. Cal. Penal §§ 17(b), 1203.4, 1203.4a, 1203.41.			Misdemeanors under age 18 when crime committed and who are otherwise eligible may apply to have record sealed. Cal. Penal § 1203.45(a).	In any case where a person has been arrested and an accusatory pleading has been filed, but where no conviction has occurred, the court may, with the concurrence of the prosecuting attorney, order that the records be sealed and destroyed. Cal. Penal § 851.8(d).
CO	Court imposing a non-prison sentence may relieve any collateral consequence. Colo. Rev. Stat. §§ 18-1.3-107 (sentencing alternatives), 18-1.3-213 (probation), and 18-1.3-303 (community corrections). Drug convictions after July 1, 2011, may be sealed after three to ten years. § 24-72-308.6. Convictions before that subject to 10-year waiting period. § 24-72-308.5. The court must grant the petition unless the district attorney objects.	Deferred adjudication may lead to sealing. Colo. Rev. Stat. §§ 24-72-308(1)(a); § 18-1.3-101 (pretrial diversion), 18-1.3-102 (deferred sentencing).	Petty offenses and municipal violations (except for traffic offenses). See Colo. Rev. Stat. § 24-72-308.9.		All but violent offenses, if no subsequent adjudications.. Colo. Rev. Stat. § 19-1-306. Court must advise at time of sentencing, and no eligibility period. §§ 19-1-306(2), (6). The person and court may indicate that no record exists. § 19-1-306(1).	Courts must seal a criminal record where the charges were completely dismissed or the person is acquitted. Col. Rev. Stat. § 24-72-308.

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Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
CT			Six programs for deferred adjudication may result in “erasure” of record. May deny conviction; predicate unless records destroyed. Conn. Gen. Stat. § 54-142a.		Pardoned conviction “erased;” after 3 years records destroyed; may deny conviction. Conn. Gen. Stat. § 54-142a(d).	Upon majority, may petition for erasure of police & court records, if no subsequent convictions. Separate erasure law for “youthful offenders” once 21 years old. Conn. Gen. Stat. §§ 46b-146, 54-76o.	“Erasure” of criminal records where charges have been dismissed or nolled, or where person has been acquitted; may deny arrest under oath. Conn. Gen. Stat. § 54-142a.
DE			Probation Before Judgment under Del. Code tit.11 § 4218, or the first offenders controlled substances diversion program, tit. 16 § 4767.	Mandatory expungement upon request for first misdemeanors & certain violations if not subsequently convicted. Del. Code Ann. tit 11, § 4373.	Expungement if unconditionally pardoned of misdemeanor & violation convictions. Del. Code Ann. tit 11, § 4375.	Mandatory & discretionary expungement for juvenile delinquency records. Del. Code Ann. tit. 10, § 1014-20	Court may expunge records where misdemeanor results in acquittal or other termination of action in favor of the accused, but prior conviction may disqualify. Del. Code Ann. tit. 11 § 4374. Expungement mandatory upon request for certain first offender misdemeanants. Del. Code Ann. tit. 11 § 4373.
DC			Deferred adjudication, treatment, and expungement for drug use and possession. Yes predicate.	Sealing for selected misdemeanors and one felony (failure to appear) after waiting period. May deny conviction in most situations; certain law enforcement, court, employer/licensing access. D.C. Code §§ 16-803, 16-806.		Upon majority, sealing after a two-year waiting period with no subsequent convictions. D.C. Code § 16-2335(a).	Court authorized to seal non-conviction records after waiting period; may deny conviction in most situations; certain law enforcement, court, & employer/licensing access. D.C. Code §§ 16-803, 16-806.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

FL		Adjudication may be withheld and defendant placed on probation for second and third degree felonies if requested by prosecutor or if court makes findings of mitigating circumstances; no conviction results and expungement for certain first offenders after 10 years. Fla. Stat. Ann. §§ 948.01(2), 943.0585(2)(h), 775.08435; Fla. Crim. P. Rule 3.670.		Records of juvenile adjudications involving serious offenses are available to the public. See Fla. Stat. § 985.04(2). Expungement for nonjudicial record of minor's arrest (non-violent misdemeanor, first offense) if successfully completed a prearrest or postarrest diversion program. Fla. Stat. Ann. § 943.0582.	Court may order sealing/expungement of non-conviction records for first offenders, with certain exceptions. Limited law enforcement, employment, licensing access. Fla. Stat. Ann. §§ 943.0585, 943.059.
GA		Discharge without adjudication after completion of probation "completely exonerate[s] the defendant of any criminal purpose and shall not affect any of his or her civil rights or liberties." Ga. Code Ann. §§ 42-8-60, 42-8-62. Restores firearms privileges. 1974 Ga. Op. Att'y Gen. 48 (1974); Ga. Code Ann. § 16-11-131(f). No sealing or expungement. Effective July 2013 new sealing provisions for minor offenses in Ga. Code Ann. § 35-3-37.		Sealing upon motion to the court after a two-year waiting period and finding of rehabilitation. Ga. Code Ann. § 15-11-79.2(b).	If released without prosecution or charges dismissed, may request expungement under "record restriction" law effective July 1, 2013. Access only for law enforcement or criminal justice purposes. Ga. Code Ann. § 35-3-37.
HI		Deferred adjudication for nonviolent first offenders, expungement after one year. Also for certain first-time minor drug offenders on probation. Yes predicate. Haw. Rev. Stat. §§ 712-1255, 712-1256, 831-3.2, 853-1, 853-4.		Court may expunge juvenile adjudication records. Haw. Rev. Stat. §§ 571-88(a). Juvenile records a confidential and <i>per se</i> sealed. <i>Id.</i> § 571-84(e).	Expungement of non-conviction records; person "shall be treated as having not been arrested." Haw. Rev. Stat. § 831-3.2
ID	Reduction of felony to misdemeanor after completion of probation, with concurrence of prosecutor if earlier than five years or if crime of violence; offenses requiring sex offender registration not eligible. Idaho Code Ann. § 19-2604(3). Certain sex offenders can petition for expungement from registry after 10 years. Idaho Code Ann. § 18-8310.	Set-aside of plea where sentence deferred or suspended upon successful completion of probation, or reduction of felony to misdemeanor conviction; restores rights but does not expunge or seal (not applicable to sex offenses). Idaho Code Ann. §§ 19-2601, 19-2604(1), (2).		Juvenile convictions may be expunged after waiting period (except for serious offenses). Idaho Code Ann. § 20-525A	No provision except for unreturned arrests.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
IL	Courts authorized to remove employment and licensing bars through certificate of good conduct. 730 Ill. Comp. Stat. Ann. 5/5-5.5-55. In addition, consideration of conviction limited for certain employments where a person has received a certificate of relief from disabilities from the court. <i>Id.</i> at 5/5-5.5.		Deferred adjudication for first-time non-violent offenders may be expunged five years after successful completion of probation. Predicate offense if within five years. 20 Ill. Comp. Stat. Ann. 2630/5.2; 720 Ill. Comp. Stat. Ann. 570/410, 550/10, 5/5-6-3.4.	Sealing for misdemeanors and two minor felonies only (marijuana and prostitution). 20 Ill. Comp. Stat. Ann. 2630/5.2(c).	Pardon may provide for expungement, which results in destruction of record. 20 Ill. Comp. Stat. Ann. 2630/5.2(e); 2630/5.2(a)(1)(E).	Expungement available upon petition to the court. 705 Ill. Comp. Stat. 405/5-915. Sealing for non-expunged records. <i>Id.</i> 405/5-915(5).	Arrests that resulted in acquittal or dismissal may be expunged. 20 Ill. Comp. Stat. Ann. 2630/5.2(b). Effect of expungement is destruction of record. § 2630/5.2(a)(1)(E).
IN	Expungement of most felony offenses after waiting period ranging from five to ten years. Ind. Code § 35-38-9-2 et seq. Records “remain public,” although must be “clearly and visibly marked” as being expunged. § 35-38-9-7. Sealing for most expunged misdemeanors and Class D felonies. § 35-38-9-6. Admin. sealing from state police after 15 yrs. § 35-38-5-5.		Deferred adjudication for drug abusers and alcoholics charged with less serious felonies, if one prior and no charges pending. Ind. Code §§ 12-23-5-1 et seq., 12-23-6-1, 12-23-7-1 et seq.		Pardon “wipes out guilt” and automatically becomes basis for expungement. State v. Bergman, 558 N.E.2d 1111 (Ind. Ct. App. 1990).	Court may juvenile records expunge at any time upon petition. Ind. Code § 31-39-8-2.	Nonconviction records and convictions vacated on appeal may be expunged and sealed after one year § 35-38-9-1. Once records are sealed “only a criminal justice agency may access the records without the order of a court.” § 35-38-9-1(d).
IA			Deferred adjudication followed by expungement for first offenders. Predicate offense. Iowa Code §§ 907.3, 907.9.			Automatic expungement at age 21 if no subsequent offenses. Iowa Code Ann. § 692.17(1). Sealing at majority upon application to the court after a two-year waiting period if no subsequent offenses. Iowa Code Ann. § 232.150(1).	Expungement of non-conviction arrest records. Iowa Code Ann. § 692.17(1).

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

KS	Waiting period of 3-5 years; serious violent and sex offenses excluded. Also no expungement if required to register under KS offender registration act. Presumption in favor of expungement if court makes certain findings. May deny conviction except for certain law enforcement, employment and licensing contexts. No guns, predicate offense. Kan. Stat. Ann. § 21-6614.				Expungement of juvenile adjudications, except for serious or violent offenses, following a two-year waiting period if the person is at least age 23 and has no subsequent offenses. Kan. Stat. Ann. § 38-2312(a)-(c).	May be expunged on petition to court where no conviction results from arrest (including where charges dismissed), subject to certain court-ordered grounds for disclosure. Kan. Stat. Ann. § 22-2410.
KY		Deferred adjudication for Class D felonies; no conviction results, and expungement available if charges dismissed. Ky. Rev. Stat. Ann. §§ 431.076, 533.250-533.262.	Misdemeanants and Class D felony drug possession convictions may obtain expungement after 5 yrs. Ky. Rev. Stat. Ann. §§ 431.078, 533.250-533.262.		Expungement and sealing available, upon petition, for certain minor offenses after a two-year waiting period and no subsequent convictions. Ky. Rev. Stat. Ann. § 610.330.	Court has discretion to expunge records of misdemeanor or felony cases that result in dismissals or acquittals. Ky. Rev. Stat. Ann. §§ 431.076, 510.300.
LA		Deferred adjudication for certain misdemeanor and first offender felony convictions sentenced to probation; record expunged but remains available for law enforcement and certain licensing purposes. Predicate offense. La. Rev. Stat. Ann. § 44:9(E)			Expungement after a two-year, crime-free waiting period for misdemeanors and five-year waiting period for felonies, excluding serious offenses. La. Child Code Ann. art. 918(A)-(B).	Both felony and misdemeanor non-conviction records may be expunged, but remain available to law enforcement and for certain licensing purposes. La. Rev. Stat. Ann. § 44:9(A)-(B)

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
ME	No general sealing or expungement laws				Information re: pardoned convictions considered “non-conviction” data with limited availability per Me. Rev. Stat. Ann. tit. 16, §§ 611-622. Can delete from FBI record after 10 years per tit. 15, § 2167; and no sex offender registration if pardoned under tit. 34A, § 1125-A(6)(c).	Sealing, upon petition, for all adjudication records after a three-year, crime-free waiting period. Me. Rev. Stat. Ann. tit. 15 § 3308.	Non-conviction records may not be disseminated. See Me. Rev. Stat. Ann. tit. 16, §§ 611-622.
MD	Deferred adjudication available for certain crimes, record may be expunged after 3 years. No predicate effect. Md. Code Ann., Crim. Proc. § 6-220; <i>Jones v. Baltimore City Police Dep’t</i> , 606 A.2d 214.		Expungement for specified nuisance convictions. Md. Code Ann., Crim. Proc. § 10-105(a)(9), (c)(6).	Non-violent first offenders pardoned may obtain judicial expungement. Md. Code Ann., Crim. Proc. § 10-105(a)(8). DNA records may be expunged under Md. Code Ann., Public Safety § 2-511 (through 2013) or Crim. Proc. § 6-232(a) (beginning in 2014).	Expungement for charges transferred to juvenile court per Md. Code Ann., Crim. Proc. §§ 10-105(a)(7), 10-106. Sealing of juvenile court records available under Md. Code Ann., Courts & Judic. Proc. § 3-8A-27.	Arrest records not leading to charges are automatically expunged, and other non-conviction records (including probation before judgment) may also be expunged upon petition after a waiting period; records may be opened only upon court order. Md. Code Ann., Crim. Proc. § 10-105(a)(1)-(4), (c)(1)-(2).	

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

MA	Felonies may be sealed after 10 years if no subsequent conviction (misdemeanors 5 years), but no expungement. May deny conviction in employment application, but no guns, predicate offense. Mass. Gen. Laws ch. 276, § 100A; ch. 140, § 122. <i>See also</i> Mass. Gen. Laws ch. 151B, § 4(9) (employers may not inquire into misdemeanor convictions more than 5 years old or arrest records).		Per Mass. Gen. Laws ch. 278, § 18 (2011) (“Continuance Without a Finding”), sealing after 10 years for felonies and five for misdemeanors (Mass. Gen. Laws ch. 6, § 172).	Employers may not inquire into misdemeanor convictions more than 5 years old or arrest records. Mass. Gen. Laws ch. 151B, § 4(9).	Pardon seals automatically, recipient may deny conviction. May be used as predicate. Mass. Gen. Laws ch. 127, § 152.	Upon discharge of person committed to department, civil rights restored & past commitment cannot be received in evidence or used in subsequent proceedings except as against same person. Mass. Gen. Laws ch. 120, § 21.	Non-conviction records may be sealed on order of court; may not be used to disqualify a person from public employment. Mass. Gen. Laws ch. 276, § 100C.
MI	Set-aside for first offenders (certain traffic & sex offenses excluded) 5 years following discharge or release from prison. Law enforcement and employment-related uses, predicate. Mich. Comp. Laws § 780.621	Mich. Comp. Laws § 333.7411 (probation before judgment for drug first offenders): nonpublic records kept by state police, available to law enforcement and court.			Subject to exceptions, mandatory destruction of diversion records after reaching age 17. MCR 3.925(E)(2)(a). Sealing upon petition and finding of good cause. MCR. 8.119(F). Set-aside of a single delinquency adjudication upon meeting certain criteria. Mich. Comp. Law. Ann. § 712A.18e.		First offenders may have non-conviction record sealed by requesting court to return fingerprints. Mich. Comp. Laws § 28.243(8), (12)

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
MN	Trial court has common law expungement authority; balancing test applied. <i>State v. S.L.H.</i> , 755 N.W.2d 271 (Minn. 2008). Legislation enacted in April 2014, and effective in January 2015, authorizes expungement (sealing) of all misdemeanors and many minor non-violent felonies. Minn. Stat. §§ 609A.02, subd. 3. Applies to both court and executive branch records.		Deferred sentencing for felony convictions, treated as misdemeanors following probation. Minn. Stat. § 609.13. Deferred prosecution and expungement for minor drug offenses per Minn. Stat. §§ 152.18, 609A.03.		“Pardon extraordinary” has effect of “setting aside and nullifying” conviction, but does not expunge or seal record. Recipient may deny conviction.	Sealing of conviction records available for juveniles tried as adults once finally discharged or probation successfully completed (some law enforcement exceptions). Minn. Stat. §§ 609A.02, subd. 2; 609A.03, subd. 7. Expungement of juvenile delinquency adjudications available for certain offenses and case dispositions. Minn. Stat. § 260B.198, subd. 6.	Expungement of non-conviction records; remain available for certain law enforcement and background check purposes. Minn. Stat. §§ 609A.02, subd. 3; 609A.03, subd. 7; 299C.11.
MS		Expungement of first offender convictions of misdemeanors and some minor felonies. Miss. Code Ann. § 99-19-71.	Deferred adjudication followed by dismissal for misdemeanors and certain felonies, but no expungement unless otherwise provided by law. Miss. Code Ann. § 99-19-26.			Sealing upon reaching age 20 if case dismissed or set aside; judge has discretion to seal and unseal. Miss. Code Ann. § 43-21-263(2).	Expungement of records not resulting in conviction. Miss. Code Ann. §§ 99-15-59, 99-15-26(5).
MO			Sealing for suspended & probationary sentences, becomes “non-conviction” record, need not be reported; sealed records remain available for law enforcement & certain licensing. Mo. Rev. Stat. §§ 557.011, 610.105-610.110.	Bad check felonies and a few public order misdemeanors may be expunged, but limited effect. § 610.140. First time alcohol-related misdemeanors, after 10 yrs. Mo. Rev. Stat. § 577.054.		Court motion may seal and destroy records after reach age 17. Juvenile driving records may be expunged after two years or upon reaching age 21. Mo. Rev. Stat. §§ 211.321, 302.545.	Automatic sealing of records in all cases disposed of favorably to the defendant. Mo. Rev. Stat. §§ 610.105, 610.110.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

MT			Deferred sentencing for first felony offenders and misdemeanants, after which charges dismissed and access to records limited (but not “expunged” or destroyed). Mont. Code Ann. §§ 46-18-201, 46-18-204.		Pardon is grounds for judicial expungement.	Automatic sealing of youth court and probation records upon reaching majority. Mont. Code Ann. § 41-5-215–216.	No provision for sealing or expunging non-conviction records.
NE			Set-aside for probationers “nullifies” conviction, removes “all civil disabilities and disqualifications” but does not expunge or seal record. Neb. Rev. Stat. § 29-2264.			Expungement only where an arrest is due to police error. Neb. Rev. Stat. § 29-3523(3). Limited availability of sealing upon showing of rehabilitation. <i>Id.</i> § 43-2,108.04(3), (4).	Criminal history information that has not resulted in a prosecution after a period of one year may not be disseminated except to law enforcement agencies. Also expungement for arrest records resulting from law enforcement error. Neb. Rev. Stat. § 29-3523.
NV	Sealing available after 7-to-15-year waiting period for felonies (depending on offense) and 2-7-year waiting period for misdemeanors, if no subsequent arrest. Conviction may be denied (with law enforcement and firearms exceptions). No predicate effect. Nev. Rev. Stat. §§ 179.245, 179.285, 179.301.		Nev. Rev. Stat. Ann. § 458.300 authorizes deferred sentencing for persons adjudged an addict or alcoholic; upon successful completion of a treatment program, the conviction may be set-aside and the record sealed. Also sealing available for those honorably discharged from probation without waiting period per Nev. Rev. Stat. § 176A.850.	Sealing available for more minor offenses (misdemeanors & lesser felonies) under various statutes (e.g., drug offenses per Nev. Rev. Stat. § 453.3365).		Automatic sealing upon reaching age 21 for most offenses. Nev. Rev. Stat. ann. § 62H.140. Earlier sealing upon petition and a hearing after a three-year waiting period. <i>Id.</i>	Non-conviction records may be sealed at any time after completion of case, may deny arrest. Nev. Rev. Stat. §§ 179.255, 179.285.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
NH	Convictions for most non-violent offenses may be “annulled” after waiting periods of 1 to 10 yrs. Public access and inquiries limited, but it may be given predicate effect. N.H. Rev. Stat. § 651:5.					Records closed and placed into an inactive file upon reaching age 21, with access remaining for law enforcement. N.H. Rev. Stat. Ann. § 169-B: 35.	Non-conviction data may be expunged by court subject to same “public welfare” standard; arrest deemed never to have occurred. N.H. Rev. Stat. Ann. § 651:5(II).
NJ	Sentencing court may issue certificate evidencing rehabilitation that “suspends certain disabilities, forfeitures or bars to employment or professional licensure.” N.J. Stat. Ann. § 2A:168A-7.	Expungement for first offenders for less-serious crimes after 10 years (waiting period reduced or waived in some situations). May deny except in connection with judicial and law enforcement jobs. N.J. Stat. Ann. §§ 2C:52-1 et seq.	N.J. Stat. Ann. § 2C:36A-1 authorizes deferred adjudication and sealing for minor drug offenses after 6-month waiting period		Pardon makes eligible for expungement. <i>In re L.B.</i> , 848 A.2d 899 (N.J. Super. Ct. 2004).	Expungement for most juvenile adjudications after 5-yrs, with no subsequent convictions. N.J. Stat. Ann. §§ 2A:4A-44; 2C:52-2, 4.1. Special expungement procedure for drug convictions occurred before age 21. <i>Id.</i> § 2C:52-5. Sealing upon good behavior or military enlistment. <i>Id.</i> § 2A:4A-62.	Arrest and other non-conviction data may be expunged upon petition; episode deemed never to have occurred. N.J. Stat. Ann. § 2C:52-6. § 2C:52-1
NM		Expungement available for first offender drug possession if 18 or under at time of offense. N.M. Stat. Ann. § 30-31-28(D).	Deferred sentencing available except in first degree felony cases; rights restored but conviction remains. No expungement, and conviction has predicate effect. Does not qualify as “set-aside” for purposes of avoiding federal firearms restrictions. N.M. Stat. Ann. § 31-20-3.			Court may seal records relating to juvenile delinquency petitions. N.M. Stat. Ann. § 32A-2-26.	Arrest information may be expunged if for misdemeanor (excluding moral turpitude offense) and no records of final outcome can be found. N.M. Stat. Ann. § 29-3-8.1.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

NY			Deferred adjudication includes automatic expungement upon completion unless DA demonstrates “that the interests of justice require otherwise.” N.Y. Crim. Proc. Law §§ 160.58, 216.00 et seq. Conditional sealing of certain drug and other specified felony convictions upon completion of a judicially sanctioned “diversion” or drug treatment program.	Up to three prior misdemeanors may be sealed pursuant to conditional sealing authority described in column to left.		Sealing applicable to juvenile offender adjudications and proceedings. N.Y. Crim. Proc. Law § 720.35	Sealing automatic upon termination of the action in favor of a person (including deferred adjudication), unless the district attorney demonstrates “that the interests of justice require otherwise.” N.Y. Crim. Proc. Law §§ 160.50, 160.55.
NC		First offender felonies and misdemeanors committed under age 18 or 21 may be expunged (2 years waiting period for under 18 misdemeanors & under 21 alcohol misdemeanors). N.C. Gen. Stat. §§ 15A-145 et seq.	Deferred adjudication for first-time minor drug offenders. No conviction results if probation successfully completed. No predicate effect. Expungement of records only if under 21. N.C. Gen. Stat. §§ 90-96(a), 90-113.14(a).	Minor nonviolent felonies & misdemeanors eligible for expungement after 15 years (effective July 2012).		May petition for expungement upon reaching majority after an 18-month waiting period after demonstrating good behavior and no subsequent convictions. N.C. Gen. St. § 7B-3200(b). Certain gang crimes & cyberbullying offenses committed under age 18 may be expunged. N.C. Gen. Stat. §§ 15A-145.1, 14-458.1(c).	Where charges are dismissed or the person found not guilty, may apply to the court for expungement if no prior felony convictions. N.C. Gen. Stat. § 15A-146(a).
ND	Minor felony convictions set aside and “knocked down” to misdemeanor after successful completion of probation. Sealing automatic. Predicate effect. N.D. Cent. Code §§ 12.1-32-02, 12.1-32-07.1, 12.1-32-07.2(2).	.First offender marijuana possession can be sealed upon court motion if not subsequently convicted within 2 years. N.D. Cent. Code 19-03.1-23(9).	Deferred imposition of sentence available per N.D. Cent. Code § 12.1-32-02, but no expungement/sealing.			Automatic sealing after the conclusion of juvenile proceedings. N.D. Cent. Code § 54-23.4-17(5). Permanent destruction of records after a specified time depending on the adjudication. N.D. Sup. Ct. Admin. R. 19(9).	Courts have inherent authority to expunge nonconviction records, <i>State v. Howe</i> , 308 N.W.2d 743, 749 (N.D. 1981) and to limit access to internet files of nonconviction records.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
OH	Records sealed for one felony and/or up to 2 misdemeanors, after 1-3 yr. waiting period depending on offense if court finds rehabilitation. Certain serious offenses excluded. Applies to federal and out-of-state convictions. May deny conviction w/ some exceptions. Access in law enforcement and licensing contexts. Predicate offense. Ohio Rev. Code Ann. §§ 2953.31 et seq. (amended June 2012). Ohio judges may also issue a "certificate of qualification for employment" that removes automatic sanctions and allows consideration on the merits. Ohio Rev. Code Ann. § 2953.25.		Intervention in lieu of conviction available for certain non-serious first offenses; successful completion and abstinence results in not being treated as a conviction. Ohio Rev. Code Ann. §2951.041		Pardon may be basis for sealing record, but sealing is not automatic. <i>State v. Boykin</i> , 2013-Ohio-4582, 2013 Ohio LEXIS 2330 (Ohio, 2013).	Sealing of records for delinquency adjudications, except for murder or rape offenses, after 6 months from discharge. Ohio Rev. Code Ann. § 2151.356.	Sealing for records that did not lead to a conviction, or in which conviction was overturned. Ohio Rev. Code Ann. §§ 2953.52, 2953.55
OK		First offender misdemeanors expunged after 10 years if no charges pending. 22 Okla. Stat. Ann. § 18(10)	Deferred adjudication and probation leading to expungement for first offenders and misdemeanants. 22 Okla. Stat. Ann. § 991c. Misdemeanants also eligible for expungement after completion of deferred judgment under 22 Okla. Stat. Ann. § 18(8) (eff. 11/12). First drug offenders eligible for deferred sentencing and expungement under 63 Okla. Stat. Ann. § 2-410(A)	Non-violent felonies after 10 years. 22 Okla. Stat. Ann. § 18(9) (effective 11/2012).	Non-violent first offenders who have been pardoned (after 10 years) and those under age 18 at time of conviction who have been pardoned. 22 Okla. Stat. Ann. §§ 18(6), 18(11) (effective 11/2012).	Expungement eligibility upon reaching age 21 and no subsequent criminal behavior. Okla. Stat. tit. 10A, § 2-6-109(A)	Expungement (sealing) of records of acquittals, reversals, innocence, or where charges never filed under 22 Okla. Stat. Ann. § 18(1)-(5). Effective Nov. 2012, expungement for cases in which charges dismissed under 22 Okla. Stat. Ann. § 18(7).

Margaret Colgate Love, NACDL Restoration of Rights Resource Project, October 2014

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

OR	Less serious non-violent offenses may be “set aside” after waiting period of 1 to 20 years, no other conviction in past 10 years (or ever, if setting aside Class B felony), or arrest within 3 yrs. Order must issue unless court finds it would not be “in the best interests of justice.” May deny conviction, but counts as predicate. Or. Rev. Stat. § 137.225.				Expungement and sealing eligibility upon reaching majority. Or. Rev. Stat. § 419A.262(2). Expungement after a five-year waiting period with no subsequent felony or Class A misdemeanor convictions. <i>Id.</i> § 419A.262(2)(a)-(e).	One year from the date of any arrest, if no accusatory instrument was filed, or at any time after an acquittal or a dismissal of the charge, the arrested person may apply to the court for entry of an order setting aside the record of such arrest. Or. Rev. Stat. § 137.225(1)(b).
PA	Expungement available for “summary” offenses after 5 yrs; also for underage drinking, and for those over 70 if no arrests for 10 yrs, and 3 yrs after death. 18 Pa. Cons. Stat. § 9122; 234 Pa. Code chs. 4, 7.	Expungement for probation without verdict (ARD) for non-violent first time drug offenses. 35 Pa. Cons. Stat. §§ 780-117, 780-119.	Pardon basis for judicial expungement. <i>Commonwealth v. C.S.</i> , 534 A.2d 1053 (Pa. 1987).	Upon reaching majority, expungement with complete destruction of records available after a five-year waiting period for delinquency adjudications. 18 Pa. Cons. Stat. Ann. § 9123.	Expungement available for non-conviction records where no disposition indicated after 18 months or by court order (includes pre-plea diversion cases after successful completion of probation). 18 Pa. Cons. Stat. § 9122. Constitutional right to seek judicial expungement of an arrest record, based on balancing test. <i>Comm. v. Armstrong</i> , 434 A.2d 1205 (Pa. 1981). Partial expungement of charges nol prosed also available. <i>Comm. v. Hanna</i> , 964 A.2d 923 (Pa. Super. 2009)	

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
PR	Broad expungement authority for all offenses, including violent felonies, after waiting period of six months to 5 years (felony offenders also must provide DNA sample), if applicant demonstrates “good moral reputation in the community.” P.R. Laws Ann. tit. 34, §§ 1725a-1 et seq.		Certificate of rehabilitation available to persons who have not completed prison term if deemed totally rehabilitated, psychological recommendation required, court orders conviction not be included in criminal record certificate but may be used for recidivism purposes. P.R. Laws Ann. tit. 4, § 1611 et seq.				Revoked verdicts may be expunged. P.R. Laws. Tit. 34, § 1725b
RI		Nonviolent first offenders only, after 5-10 yrs. Allows denial except for certain jobs and licenses. Predicate offense. R.I. Gen. Laws §§ 12-1-3-1 et seq.	Deferred sentencing cases may be sealed after successful completion of five (5) year probation period, if no prior felony convictions. R.I. Gen. Laws §§ 12-19-19(c), 12-1-12.1. “Filing” complaints must be sealed upon successful completion of one-year probation, three years for domestic violence cases. R.I. Gen. Laws § 12-10-12.			Automatic sealing, with limited exceptions, upon final disposition of juvenile case. R.I. Gen. Laws §§ 14-1-6.1, 14-1-64(b). Juvenile adjudication can be used for sentencing purposes in adult court and does constitute a conviction for impeachment purposes.	Court sealing of records of persons acquitted or otherwise exonerated (including charges dismissed pursuant to deferred sentencing) if no prior felony convictions. R.I. Gen. Laws § 12-1-12.1.
SC		Expungement for first offense fraudulent check, alcohol education program, and failure to stop for law enforcement signal offenses. S.C. Code Ann. §§ 34-11-90(e), 17-22-530(A), 56-5-750(F).	Deferred adjudication for first-time minor drug offenders, no conviction results and expunged. S.C. Code Ann. § 44-53-450. Non-violent first offenders eligible for pretrial intervention, non-criminal disposition, and expungement. S.C. Code Ann. §§ 17-22-10 et seq. No predicate effect. Expungement of records if under 25, non-violent felony, and first offense. S.C. Code Ann. § 22-5-920(B).	First offense misdemeanors (ex. traffic offenses) may be expunged if no other conviction within 3 years (5 years for domestic violence cases). S.C. Code Ann. § 22-5-910(A)		Expungement available upon majority for status and nonviolent offenses, with certain exceptions for serious crimes and repeat offenders. S.C. Code Ann. § 63-19-2050(A).	If charges dismissed or person found not guilty, all records must be destroyed and “no evidence of such record pertaining to such charge shall be retained by any municipal, county or State law enforcement agency.” S.C. Code Ann. § 17-1-40(A)

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

SD			Deferred adjudication for first felony offenders, except for serious offenders; results in no conviction, records sealed. S.D. Codified Laws §§ 23A-27-14 – 23A-27-17.	Records of misdemeanor offenses may be destroyed after 10 years (incl. records for offenders over age 75). S.D. Codified Laws § 24-14-11 § 23-6-8.1.	Pardon seals record automatically where statutory process followed. S.D. Codified Laws § 24-14-11	Sealing upon petition after a waiting period and finding of no subsequent convictions and rehabilitation. S.D. Codified Laws § 26-7A-115.	Records sealed where no adjudication of guilt, including deferred adjudication. S.D. Codified Laws §§ 23A-27-14 – 23A-27-17.
TN	Effective July 2012, certain less serious non-violent offenses eligible for expungement if not convicted of another offense and 5 yrs elapsed since completion of sentence; may deny conviction; remain available to law enforcement. Tenn. Code Ann. § 40-32-101.		Deferred adjudication for first offenders, results in no conviction, no predicate effect (except subsequent related civil actions), records expunged. Tenn. Code Ann. § 40-35-313. Misdemeanants and Class D felons who successfully complete probation eligible for expungement under Tenn. Code Ann. § 40-15-102 – 40-15-106.		Effective May 2013, a pardon is grounds for expungement and thus restoration of firearms privileges. <i>See</i> Tenn. Code Ann. § 40-29-105(h).	Expungement upon majority or after a one-year waiting period if certain criteria are met. Tenn. Code Ann. § 37-153(f).	Court may order “destruction” of records in case of acquittal, or where charges dismissed. Tenn. Code Ann. § 40-32-101(a). Conviction records may be redacted to expunge charges not resulting in conviction. <i>See State v. L.W.</i> , 350 S.W.3d 911 (2011)
TX			Deferred adjudication available (certain offenses, such as sex and violent offenses, excluded), results in dismissal of charges and no conviction; may result in sealing for most offenses, after 5-year waiting period for felony offenses. Tex. Gov’t Code § 411.081(d); Tex. Code Crim. Proc. art. 42.12.		Pardon basis for judicial expungement. Tex. Code Crim. Proc. Ann. art. 55.01(a).	Automatic restriction to access of records when offender reaches age 21 if no convictions after age 17. Tex. Fam. Code Ann. § 58.204. Traditional sealing upon petition after a two-year waiting period for misdemeanors, with stricter requirements for sealing of felonies. <i>Id.</i> § 58.003.	“Expunction” of all records may be ordered in cases where an arrest does not result in a conviction, except that only Class C misdemeanants eligible in case of deferred adjudication. Tex. Code Crim. Proc. Ann. art. 55.01(a), art. 55.01(2)(B).

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
UT	Most offenses may be “expunged” after 3-7 yr waiting period. Order must issue unless court finds it would be “contrary to public interest.” May deny conviction. Predicate offense. Utah Code Ann. §§ 77-40-101 et seq.				Pardon entitles person to expungement. Utah Code Ann. § 77-40-105(5).	Expungement after a one-year waiting period upon reaching majority and filing a petition with the court if no adult criminal record. Utah Code Ann. §§ 78A-6-1105(1)(a)(i)–(ii), (e).	Person arrested may petition for expungement if acquitted or charges dismissed 30 days after arrest took place. Class C misdemeanors where adjudication deferred may also qualify. Utah Code Ann. § 77-40-104.
VT	Misdemeanors and two minor felonies eligible for expungement after 10 yrs with no further conviction, or sealing if “better serves the interest of justice.” Either available after 20 yrs if no misdemeanor conviction within past 15 yrs. Vt. Stat. Ann. tit. 13, §§ 7601 et seq. Effective 2016, courts may relieve collateral sanctions at and after sentencing for all but the most serious offenders. 13 V.S.A. § 8001 et seq.		Deferred sentencing and diversion may result in expungement of record, may deny conviction. No predicate effect. Vt. Stat. Ann. tit. 13, § 7041. Sealing available under first offender diversion program 2 years after completion of program. Vt. Stat. Ann. tit. 3, § 164.			Records sealed 2 yrs after discharge unless additional charges pending & rehabilitation not attained. Vt. Stat. Ann. tit. 33, § 5119(a)	Expungement or sealing of non-conviction records if charges not brought or dismissed before trial. Vt. Stat. Ann. tit. 13, § 7603.
VI			Deferred adjudication and expungement available for non-violent first offenders, and for first time drug possession offenses committed under age 21. V.I. Code Ann. tit. 19, § 607(b)(1); tit. 5, § 3711(c). Probation and expungement of any offense after 5 yr waiting period if under age 21 when offense committed. V.I. Code Ann. tit. 5, § 3712.	Expungement of misdemeanor convictions upon petition to court. V.I. Code Ann. tit. 5, § 3734.		V.I. Code Ann. tit. 5, § 3712 (probation and expungement for first offenders after 5-year waiting period if under 21 when offense committed. V.I. Code Ann. tit. 19, § 607(b)(1) (deferred adjudication and expungement for time drug possession committed under age 21).	Records of arrest that do not result in conviction “must be expunged” where case dismissed, acquittal, nolle prossed. Non-conviction records may be dismissed in other cases. V.I. Code Ann. tit. 5, §§ 3732-3733.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

VA		Deferred Adjudication for certain first time drug offenders, but no expungement. Va. Code Ann. § 18.2-251.		Absolute pardon (granted for innocence) entitles person to judicial expungement.	Automatic destruction of records annually if juvenile is at least age 19 and five years have passed since last hearing in any juvenile case, with several exceptions. Va. Code Ann. §§ 16.1-306(A)-307.	Non-conviction records may be expunged in case of acquittal or where charges nolle prossed or dismissed. Va. Code Ann. § 19.2-392.2.
WA	All but most serious offenses may be “vacated” after waiting period of 5 to 10 yrs; conviction erased, limited predicate effect. Wash. Rev. Code § 9.94A.640. “Thereafter, the proceedings in the case shall be treated as if they never occurred, and the subject of the records may reply accordingly to any inquiry about the events, records of which are sealed.” <i>Id.</i>	After conviction of “any crime,” court may suspend or defer sentence, and place defendant on probation; may petition to have record vacated and sealed after probation expired. § 9.94A.640. Wash. Rev. Code §§ 3.66.067, 9.95.200.	Most misdemeanors eligible to be vacated after 3-5 yr waiting period. Wash. Rev. Code § 9.96.060.	Pardon vacates conviction automatically, and seals record. Wash. Rev. Code § 9.94A.030 (11)(b).	Diversion records may be destroyed by court order or automatically in certain situations. Wash. Rev. Code § 13.50.050(3). Sealing available by court order for most offenses after a crime-free waiting period of two to five years depending on the seriousness of the offense. <i>Id.</i> § 13.50.050(11), (12).	Non-conviction records in criminal justice agency files may be sealed administratively two years after disposition favorable to defendant. Wash. Rev. Code § 10.97.060.
WV			Youthful (18-26) first misdemeanor convictions may be expunged after 1 year (violent, domestic violence, DUI, crimes against children excluded). W. Va. Code § 61-11-26.	Judicial expungement one year after pardon and at least 5 years after discharge of sentence (certain exceptions for violent crimes); may not be considered for licensing and teaching. W. Va. Code § 5-1-16a.	Automatic sealing after a one-year waiting period or reaching majority unless case is transferred to adult court. W. Va. Code § 49-5-18(a), (f).	Court may expunge records of acquittals, dismissals for first felony offenders only (no DMV expungements). W. Va. Code § 61-11-25.

Chart # 4 - Judicial Expungement, Sealing, and Set-aside

State	All Or Most Offenses	First Offenders	Probationary Sentences (incl. Deferred adjudication)	Misdemeanors Only	Pardoned Offenses	Juvenile Adjudications	Non-conviction records
WI			Deferred prosecution in domestic violence & some sex offense cases authorized by Wis. Stat. § 971.37; upon successful completion of deferral, charges dismissed and no conviction results.	Misdemeanor and minor felony convictions may be ordered expunged by the trial court at the time of sentencing if committed before age 25; law enforcement and prosecutor access. Wis. Stat. § 973.015.		Expungement upon petition after reaching age 17 and a finding that sentencing requirements have been completed and expungement will benefit offender without harming society. Wis. Stat. § 938.355(4m).	No provision for sealing or expunging non-conviction records.
WY	Certain felony convictions may be expunged 10 years after sentence expires if no other felony convictions, court must find applicant is not a danger. Wyo. Stat. Ann. § 7-13-1502.		Deferred sentencing for first felony offenders and misdemeanants (certain serious crimes excluded); specifically prohibits expungement. Wyo. Stat. Ann. §§ 7-13-301 et seq.	Expungement of certain misdemeanors five years after completion of sentence if offense did not involve use of firearm. Wyo. Stat. Ann. § 7-13-1501		May apply for expungement after reaching majority and presenting evidence of rehabilitation and no subsequent offenses. Wyo. Stat. Ann. § 14-6-241(a).	Courts may expunge non-conviction records if no charges pending, 180 days after dismissal of proceedings. Wyo. Stat. Ann. § 7-13-1401.
FD	Some federal courts assert inherent ancillary authority to expunge if arrest or conviction is invalid or subject of clerical error. <i>United States v. Sumner</i> , 226 F.3d 1005 (9 th Cir. 2000). Also DNA expunged if conviction overturned. 10 U.S.C. § 1565(e); 42 U.S.C. § 14132(d).		Deferred adjudication for first misdemeanor drug possession under 18 U.S.C. § 3607(a). See also id. at (c) (expungement available if under 21 years old at time of offense).				No provision for sealing or expunging non-conviction records.

Chart #5 –Consideration of Criminal Record in Licensing and Employment

CHART #5 –CONSIDERATION OF CRIMINAL RECORD IN LICENSING AND EMPLOYMENT						
State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
AL						None
AK						None
AZ					If civil rights restored cannot be barred from licensure or public employment “solely because of” conviction; offense must have “reasonable relationship” to employment or occupation. Ariz. Rev. Stat. § 13-904(E).	
AR			Conviction may be considered but may not bar from licensure; 5 years of law-abiding conduct is “prima facie evidence of rehabilitation.” Reasons for rejection must be in writing. Ark Code Ann. § 17-1-103.			
CA	It is unlawful for a public or private employer to inquire into or seek information about a conviction that has been set-aside and dismissed. CAL. CODE REGS. tit. 2 § 7287.4(d)(1)		“[N]o person shall be denied a license solely on the basis that he or she has been convicted of a felony if he or she has obtained a certificate of rehabilitation . . . or that he or she has been convicted of a misdemeanor if he or she has met all applicable requirements of the criteria of rehabilitation developed by the board to evaluate the rehabilitation of a person when considering the denial of a license. . . .” CAL. BUS. & PROF. § 480(b). Suspension or revocation of license allowed only if crime “substantially related” to qualifications. Id. § 490.	<i>Ban-the-Box:</i> A state or local agency may not inquire into criminal history “until the agency has determined the applicant meets the minimum employment qualifications. . . .” CAL. LABOR § 432.9.		

Margaret Colgate Love, NACDL Restoration of Rights Project, May 2014

Chart #5 –Consideration of Criminal Record in Licensing and Employment

CO	<p>Court imposing a non-prison sentence may enter order relieving defendant of any collateral consequence. Colo. Rev. Stat. §§ 18-1.3-107 (sentencing alternatives), 18-1.3-213 (probation), and 18-1.3-303 (community corrections).</p> <p>Negligent hiring protection for convictions not “directly related” to employment, or that have been sealed or pardoned. Colo. Rev. Stat. § 8-2-201(b).</p>	<p>Conviction alone may not be basis for refusing employment or licensure unless law specifically authorizes. Colo. Rev. Stat. § 24-5-101(1).</p> <p><i>Ban-the-Box:</i> State agencies and licensing boards may not conduct background check until applicant is a finalist for the position or receives a conditional offer. In determining disqualification, agency must consider (1) the nature of the conviction; (2) the relationship of the conviction to the job; (3) the applicant’s rehabilitation and good conduct; and (4) time elapsed since conviction. § 24-5-101(4). Arrest records not leading to conviction may not be used.</p>			
CT		<p>With limited exceptions relating to law enforcement and certain mortgage-related licenses, public employers and licensing authorities may not disqualify a person automatically on the grounds of a prior conviction but must consider: 1) the nature of crime and its relationship to the job; 2) information pertaining to rehabilitation; and 3) time elapsed since conviction. Conn. Gen. Stat. §§ 46a-80(a) and (c). If conviction used as a basis for rejection of an applicant, it must be in writing and specifically state the evidence presented and reasons for rejection. § 46a-80(d).</p>		<p><i>Ban-the Box</i> in public employment. Conn. Gen. Stat. § 46a-80(b) (“no [state employer] shall inquire about a prospective employee's past convictions until such prospective employee has been deemed otherwise qualified for the position”).</p>	<p>May not deny employment or licensure based on pardoned offense. Conn. Gen. Stat. §§ 46a-80(a) and (c).</p>
DE		<p><i>Ban-the-Box</i> - public employers and contractors prohibited from inquiring into criminal records prior the making an offer of employment, and then may consider only felonies within ten years and misdemeanors within five years. Del. Code Ann. tit. 19, § 711(g); tit. 29, § 6909B(a). Uniform licensing policy that crimes must be “substantially related” to the profession or occupation at issue. 74 Del. Laws 262 (2004) (codified in scattered sections of Del. Code. Ann., tit. 24).</p>			

Chart #5 –Consideration of Criminal Record in Licensing and Employment

State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
DC	D.C. Code § 1-601.01	Licensing: Crimes must “bears directly upon the fitness” of the person to be licensed. D.C. Code §§ 47-2853.17(a), 3-1205.03. Public employment: Limits pre-employment inquiries for most government positions until after the initial screening. Must consider: duties and responsibilities of the position, bearing on performance of duties, time elapsed, age at time of the offense, the frequency and seriousness of the offense, rehabilitation and good conduct, and public policy interest. D.C. Code § 1-620.42–43.				
FL		Crime may be basis of disqualification only if “directly related” to the job. Fla. Stat. §112.011(1)(a). Additional treatment requirements for drug offenders. Fla. Stat. ch. 775.16.			Licensing boards may not reject based on conviction if the person’s civil rights have been restored, unless offense conduct is “directly related” to license. Fla. Stat. 112.011(1)(b).	
GA						[Conviction of a felony or any crime involving moral turpitude may be grounds for revocation or refusal of a license, without regard to whether it is related to the practice of the licensed business or profession. <i>See</i> Ga. Code Ann. § 43-1-19(a)(3).]

Chart #5 –Consideration of Criminal Record in Licensing and Employment

HI	<i>Ban-the-Box</i> Plus: General FEP law prohibits inquiry into arrest and conviction before a conditional offer of employment, which may be withdrawn if a conviction within the previous 10 years “bears a rational relationship to the duties and responsibilities of the position.” Haw. Rev. Stat. §§ 378-2.5(b), (c). In addition, crime w/in 10 years may be considered only if rational relationship to job or occupation. Haw. Rev. Stat. § 831-3.1(a). Exceptions for healthcare, corrections, and law enforcement. Haw. Rev. Stat. § 831-3.1(f). Arrest records may not be considered at all. See Haw. Rev. Stat. § 378-2.5(b), (c).				
ID					None
IL	Negligent hiring protection where employer relied on certificate of certificate of relief from disabilities. 730 ILCS 5/5-5.5-15(f). <i>Ban-the-Box</i> policy in private employment by statute, 30 ILCS 105/5.855, and in public employment by administrative order.	In general, Illinois limits consideration of conviction in connection with occupational licensing only for certain employments, and only where a person has received a certificate of relief from disabilities. ILCS 5/5-5-5. Certain occupational licensing boards use “direct relationship” test. See, e.g., ILCS 450/20.1 (accountant); § 335./9.1(b) (roofer).	Human Rights Act prohibits discrimination based on conviction only if expunged or sealed. ILCS § 5/2-103(A). Waiver by agency permits for certain health-care positions. See § 46/40.		
IN		Except for serious drug offenses, “a license or certificate of registration that an individual is required by law to hold to engage in a business, profession, or occupation may not be denied, revoked, or suspended because the applicant or holder has been convicted of a crime.” Ind. Code § 25-1-1.1-1.	It is “unlawful discrimination” for any person to refuse to employ or license a person because of a record that has been expunged or sealed. Ind. Code § 35-38-9-10(a). Inquiry into expunged convictions prohibited. § 35-38-9-10(c). In negligence action an expungement order may be introduced as evidence of due care. § 35-38-9-10(f) and (g). Non-conviction records and records that have been expunged may not be reported to credit reporting companies. § 24-4-18-6(a).		

Chart #5 –Consideration of Criminal Record in Licensing and Employment

State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
IA						Iowa has no general law regulating consideration of conviction in employment or licensure, but applies a direct relationship test in connection with some licenses. <i>See, e.g.</i> , Iowa Code § 147.3 (health-related professions licensing)
KS						No nondiscrimination rule, but it is a misdemeanor for an employer to inquire into an applicant's criminal history record without the applicant's consent. See Kan. Stat. Ann. § 22-4710(a)-(c).
KY		"No person shall be disqualified from public employment, [or from] . . . any occupation for which a license is required, solely because of a prior conviction of a crime, unless the crime for which convicted is [a felony or misdemeanor punishable by imprisonment] or otherwise directly relates to the position of employment sought or the occupation for which the license is sought." Factors include nature and seriousness of the crime; the relationship of the crime to duties and responsibilities of the position sought. Ky. Rev. Stat. Ann § 335B.020(1) –(3).				

Chart #5 –Consideration of Criminal Record in Licensing and Employment

LA			A person may be held ineligible to practice or engage in any licensed trade, occupation, or profession solely because of a prior criminal record only if conviction involves a felony, and the conviction “directly relates to the position of employment sought, or to the specific occupation, trade or profession for which the license, permit or certificate is sought.” Exemptions for law enforcement, nursing, various other licensed professions. Reasons required, APA enforcement. La. Rev. Stat. Ann. § 37:2950.			
ME			May not consider convictions more than 3 years old, or which call for less than a year in prison. Me. Rev. Stat. Ann. tit. 5, § 5303. Certain professions (medical, nursing) have 10 year debarment. <i>Id.</i>			
MD			<i>Ban-the-Box:</i> State government employers may not inquire about an applicant’s criminal history until an applicant has had an opportunity for an interview. Md. Code Ann., State Pers. & Pens. § 2-203			No general law, but a consumer reporting agency cannot report conviction information that is older than seven years for purposes of employment, if the job about which information sought is expected to pay an annual salary less than \$20,000. Md. Code Ann., Com. Law § 14-1203(a)(5).
MA	<i>Ban-the-Box:</i> In 2010, public and private employers may not inquire into criminal records on an initial job application, unless the particular job is one for which a convicted person is at least presumptively disqualified by law. Mass. Gen. Laws ch. 151B, § 4(9 ½).			Licensing authorities may not disqualify applicant based on pardoned felony conviction. Mass. Gen. Laws ch. 127, § 152 (2011).	No general rule but licensing agency may not disqualify based on conviction alone in certain specific professions. <i>See, e.g.,</i> Mass. Gen. Laws ch. 112 § 52D (dentistry); ch. 112, § 61 (medical license); ch. 112, § 189 (real estate appraiser). Limits on inquiry into records. E.g., employers may not inquire into misdemeanor convictions more than 5 years old or arrest records. Mass. Gen. Laws ch. 151B, § 4(9).	

Margaret Colgate Love, NACDL Restoration of Rights Project, June 2014

Chart #5 –Consideration of Criminal Record in Licensing and Employment

State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
MI			Conviction “shall not be used, in and of itself, by a licensing board or agency as proof of a person’s lack of good moral character,” but it may be used as evidence in the determination. Mich. Comp. Laws § 338.42. Cannot consider non-conviction records, convictions that did not result in incarceration, or convictions unrelated to capacity to serve the public. § 338.43(1).			
MN	Negligent hiring protections. Minn. Stat. §181.981. <i>Ban-the-Box</i> for public and private employers. § 364.021(a).	Must be “direct relationship” between occupation or license and conviction history <u>and</u> individual must not have shown “sufficient rehabilitation and present fitness to perform” the duties of the public employment or licensed occupation. Minn. Stat § 364.03. Factors to be considered set out. Rehabilitation established by 1 yr. w/o arrest after release, or successful completion of probation or parole. <i>See id.</i>				
MS						None
MO			No denial of license “primarily” because of conviction where sentence fully discharged. Mo. Rev. Stat. § 324.029. Conviction may be considered as “some evidence of an absence of good moral character” but licensing board shall also consider the nature and date of crime, evidence of good character. Mo. Rev. Stat. § 314.200.			

Chart #5 –Consideration of Criminal Record in Licensing and Employment

MT		Conviction shall not operate as bar to licensure for any profession, but may be considered. Mont. Code Ann. § 37-1-201. 203.				
NE						None
NV						Nevada has no general law but applies a direct relationship test in connection with some licenses. <i>See, e.g.,</i> Nev. Rev. Stat. § 625.410(4) (engineering and land surveying).
NH					Inquiry into annulled offenses limited. N.H. Rev. Stat. Ann. § 651:5(X)(c).	
NJ	Court at the time of sentencing, or thereafter a supervisory agency, may issue a certificate evidencing rehabilitation “that suspends certain disabilities, forfeitures or bars to employment or professional licensure or certification that apply to persons convicted of criminal offenses.” N.J. Stat. Ann. § 2A:168A-7.	Licensing authorities may not “discriminate” on grounds of conviction unless reasonably related to occupation. N.J. Stat. Ann. § 2A:168A-1. Reasons in writing. § 2A:168A-2.		Pardon or expungement, or certificate of rehabilitation, “shall preclude a licensing authority from disqualifying or discriminating against the applicant.” N.J. Stat. Ann. § 2A:168A-3.		

Chart #5 –Consideration of Criminal Record in Licensing and Employment

State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
NM		<p>A person may be disqualified for public employment or licensure based on prior conviction if: 1) conviction relates directly to the position sought; 2) agency determines after investigation that the person so convicted has not been sufficiently rehabilitated to warrant the public trust; or 3) an applicant for a teaching certificate or employment at child-care facility has been convicted of drug trafficking or sex offenses, regardless of rehabilitation. N.M. Stat. Ann. § 28-2-4(A). Completion of parole or probation or a three-year period following release from incarceration creates a presumption of rehabilitation. N.M. Stat. Ann. § 28-2-4(B). Must state reasons in writing.</p> <p><i>Ban-the-Box:</i> N.M. Stat. Ann. § 28-2-3(A)(“A board, department or agency of the state or any of its political subdivisions shall not make an inquiry regarding a conviction on an initial application for employment and shall only take into consideration a conviction after the applicant has been selected as a finalist for the position.”). Records of arrest not resulting in conviction, and misdemeanor convictions not involving “moral turpitude,” may not be considered in any application for public employment or licensure. § 28-2-3(B).</p>				

Margaret Colgate Love, NACDL Restoration of Rights Project, June 2014

Chart #5 –Consideration of Criminal Record in Licensing and Employment

NY	<p>Prohibits discrimination in employment and licensing based on conviction. N.Y. Correct. Law §§ 750-755. Must be direct relationship and unreasonable risk to property or safety. § 752. Individual is entitled to reasons. § 754. N.Y.S. Human Rights Law, N.Y. Exec. Law § 296(16), prohibits public and private employers and occupational licensing agencies from denying any individual employment or a license (or otherwise discriminating against that person) because of any arrest that did NOT result in a conviction.</p> <p>Negligent hiring: N.Y. Exec. Law § 296(15) excludes evidence in suit for negligent hiring where employer complied with antidiscrimination law.</p> <p>Certificate of Relief from Disabilities, N.Y. Correct. Law §§ 700-706, or a Certificate of Good Conduct, §§ 703-a, 703-b, may be obtained to restore rights, at sentencing for first felony offenders or thereafter for all.</p>				
NC	<p>Reliance on Certificate of Relief provides protection in negligent hiring action, N.C. §15A.173.5</p>	<p>Certificate of Relief relieve collateral sanctions, and agency may consider a Certificate favorably in determining whether a conviction should result in disqualification from public employment or licensure. N.C. Gen. Stat. § 15A-173.2(d).</p>			

Chart #5 –Consideration of Criminal Record in Licensing and Employment

State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
ND			Licenses for most professions and occupations may be denied only if offense has direct bearing, or if insufficient rehabilitation; factors to be considered include nature of offense, evidence of rehabilitation, and date of offense (5 yrs. deemed <i>prima facie</i> evidence of rehabilitation). N.D. Cent. Code § 12.1-33-02.1. Written statement of reasons if denied in whole or in part because of conviction. <i>Id.</i>			
OH	Certificate of qualification for employment “immunity” from negligent hiring liability. Ohio Rev. Code Ann. § 2953.25-G(2).	An individual barred from a particular occupation or license may apply to the court for a "certificate of qualification for employment" that allows consideration on the merits. Ohio Rev. Code Ann. § 2953.25.			May be questioned about sealed conviction only if it bears if direct and substantial relationship to the position. Ohio Rev. Code Ann. §§ 2953.33(B).	
OK					No public or private employer may ask about or consider a sealed conviction. 22 Okla. Stat. Ann. § 19(F).	
OR			May not bar from licensure solely on grounds of conviction; may consider facts of conviction and all intervening circumstances in determining the fitness of the person. Or. Rev. Stat. 670.280(2), (3). Teacher licenses excepted. <i>Id.</i>			

Margaret Colgate Love, NACDL Restoration of Rights Project, June 2014

Chart #5 –Consideration of Criminal Record in Licensing and Employment

PA	Felony and misdemeanor convictions may be considered only to the extent they “relate to” the applicant's suitability for employment or licensure in the position for which he has applied. 18 Pa. Cons. Stat. §§ 9124 (licensure) 9125 (employment).					
RI	“Certificate of recovery & re-entry” if no more than one non-violent felony conviction relieves petitioner of some collateral consequences. R.I. Gen. Laws § 13-8.2-1. <i>Ban-the-Box:</i> Oral or written inquiries about arrests to applicants for public or private employment prohibited as an unlawful employment practice; and (effective January 1, 2014) convictions until the first interview. R.I. Gen. Laws § 28-5-7(7).					Prohibits inquiries about arrests as unlawful employment practice, but specifically permits inquiries about convictions. See R.I. Gen. Laws § 28-5-7(7),
SC			May not be denied a license solely due to conviction unless the criminal conviction is directly related to the profession or occupation. S.C. Code. Ann. § 40-1-140. But, board may refuse “if . . . it finds the applicant is unfit or unsuited to engage in the profession or occupation.” <i>Id.</i>			
SD						None
TN						None
TX	Limitation on negligent hiring suits based solely on conviction. Tex. Civil Practice and Remedies Code § 142.002.		Licensing authority may deny/suspend/revoke license if conviction “directly relates to the duties and responsibilities of the licensed occupation,” if offense does not directly relate but is less than 5 years old, or if specified violent and sexual offenses. Tex. Occupations Code § 53.021(a). §§ 53.022 and 53.023 require licensing agencies to consider a number of factors in determining whether a conviction is directly related to the occupation.			

Margaret Colgate Love, NACDL Restoration of Rights Project, June 2014

Chart #5 –Consideration of Criminal Record in Licensing and Employment

State	Regulation of licensing, public and private employment (including negligent hiring)	Regulation of licensing and public employment	Regulation of licensing only	Regulation of public employment only	Civil rights restored or pardoned	No regulation of licensing or employment
UT			“Unprofessional conduct” includes commission of crime that “bears a reasonable relationship to the licensee’s or applicant’s ability to safely or competently practice the occupation or profession.” Utah Code Ann. § 58-1-501(2).			
VT	Order of relief or certificate of restoration of rights issued under 13 VSA §§8010 and 8011 are admissible as evidence of due care.		“Conviction of a crime related to the practice of the profession or conviction of a felony, whether or not related to the practice of the profession,” basis for denial of license in over 40 professions. See Vt. Stat. Ann. tit. 3, § 129a(10)			
VA			May not be denied a license “solely because of” conviction unless “directly related” to the occupation or profession for which the license is sought. Board can refuse a license if applicant is “unfit or unsuited.” Va. Code Ann. § 54.1-204. Standards for determining “direct relationship” spelled out in § 54.1-204(B).			
WA		May consider a conviction only if within the last 10 years and the crime “directly relates” to the employment or license sought. Several exceptions. Wash. Rev. Code § 9.96A.020(1)-(2).				

Chart #5 –Consideration of Criminal Record in Licensing and Employment

WV						No general provision; a few professions require that conviction be “directly related” to the activity. See W. Va Code § 30-3-14(c)(2) (medicine); § 30-16-11(a)(3) (chiropractic); § 47-14-11(a)(4) (pre-need funeral contracts).
WI	Fair employment act bars discrimination by public and private employers, licensing boards, unless crime “substantially relates” to the particular job or licensed activity. Wis. Stat. §§ 111.32, 111.335(1)(c).					
WY						None
FED				Only limitation on employment in Title VII of Civil Rights Act.		No general limitation on licensure.



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 2014.

2014

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NORTH CAROLINA JUSTICE CENTER

 north carolina
JUSTICE CENTER

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 relatively rare. Instead, criminal records eligible for expunction in North Carolina are generally limited to the following three categories:

- **A first-time, nonviolent offense committed more than 15 years ago**
- **A first-time offense committed under 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. 3]
• Misdemeanor Under Age 18.....	NCGS §15A-145	[p. 4]
• Gang Offense Under Age 18.....	NCGS §15A-145.1.....	[p. 4]
• Controlled Substance Under Age 22	NCGS §15A-145.2.....	[p. 5]
• Toxic Vapors Under Age 22.....	NCGS §15A-145.3.....	[p. 6]
• Nonviolent Felony Under Age 18.....	NCGS §15A-145.4.....	[p. 7]
• Nonviolent Offense.....	NCGS §15A-145.5.....	[p. 8]
• Prostitution Offense.....	NCGS §15A-145.6.....	[p. 9]
• Charge Resulting in Dismissal or Not Guilty	NCGS §15A-146.....	[p. 10]
• Identity Theft.....	NCGS §15A-147.....	[p. 10]
• DNA Records.....	NCGS §15A-148.....	[p. 10]
• Pardon of Innocence.....	NCGS §15A-149.....	[p. 10]

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

• Certificates of Relief.....	NCGS §15A-173.....	[p. 11]
• Indigent Fee Waiver .....	.....	[p. 11]
• Steps to Submitting a Petition for Expunction.....	.....	[p. 2]
• How to Read an ACIS Criminal Record Report.....	.....	[p. 12]
• Petition for Expunction of Nonviolent Offense, Sample.....	.....	[p. 13]
• Petition for Expunction of Dismissed Charges, Sample.....	.....	[p. 14]
• Petitioner’s Affidavit, Worksheet.....	.....	[p. 15]
• Petitioner’s Affidavit.....	.....	[p. 16]
• Affidavit of Good Character, Worksheet.....	.....	[p. 17]
• Affidavit of Good Character.....	.....	[p. 18]

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 19 through 24. Additional information regarding expunction eligibility and procedures can be found in the UNC School of Government's [Digital Guide to Expunctions, Certificates of Relief, and Other Procedures in North Carolina](#).

Steps to Petitioning for Expunction of a Criminal Record

Obtain an Accurate, Complete Copy of the Individual's Criminal Record

See Frequently Asked Question 1 [p. 19]



Determine the Individual's Eligibility for Expunction

See Expunction Grid [pp. 3-11]



Identify and Obtain the Correct Petition Form

See Expunction Grid [3-11]; see also FAQ 2 [p. 19]



Complete the Petition Form and Any Required Affidavits

See Samples [pp.12-18]



Determine and Follow the County-specific Procedures for Submitting a Petition

See FAQ 3 [pp. 19-20]



Immediately Respond to Notice that Petition has Come Back from the SBI/AOC

See FAQ 4 [p. 21]



If Required, Schedule a Hearing on the Petition for Expunction

See FAQ 6 [p. 23]

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
Juvenile Record- Dismissal <u>NCGS 7B-3200(h)</u>	1. Alleged by juvenile petition to be delinquent or undisciplined juvenile; 2. Juvenile petition was dismissed; 3. Person has attained the age of: i. 16 years if alleged delinquent; ii. 18 years if alleged undisciplined.		Petition Form: AOC-J-909M Filing Fee: \$0 Required Affidavits: None
Juvenile Record- Undisciplined <u>NCGS 7B-3200(a)</u>	1. Adjudicated undisciplined; 2. Attained the age of 18 years; 3. Good behavior since adjudication.		Petition Form: AOC-J-903M Filing Fee: \$0 Required Affidavits: a. Petitioner affidavit stating been of good behavior since the adjudication. i. ***Petition form (AOC-J-903M) serves as petitioner's affidavit. 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 i. See Form AOC-J-904M (affidavit of good character)
Juvenile Record- Delinquent <u>NCGS 7B-3200(b)</u>	1. Adjudicated delinquent; 2. Attained the age of 18 years; 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; 4. At least 18 months have elapsed since petitioner was released from juvenile court jurisdiction; 5. Not subsequently adjudicated delinquent; 6. Not convicted as an adult of any felony or misdemeanor, other than a traffic violation.		Petition Form: AOC-J-903M Filing Fee: \$0 Required Affidavits: a. Petitioner affidavit stating: i. Good behavior since adjudication. ii. Has not subsequently been adjudicated delinquent; and has not been convicted of a felony or misdemeanor iii. ***Petition form (AOC-J-903M) serves as petitioner's affidavit. 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 i. See Form AOC-J-904M (affidavit of good character)

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
Misdemeanor Under 18 <u>NCGS 15A-145</u>	<ol style="list-style-type: none"> 1. Misdemeanor conviction* committed before age 18 OR misdemeanor possession of alcohol (18b-302(b)(1)) committed before age 21 2. No previous misdemeanor or felony convictions, other than traffic violations. 3. No subsequent misdemeanor or felony convictions, other than traffic violations, within 2 year waiting period. 4. At least 2 years have passed since the date of conviction. 5. The individual has fully completed his or her sentence (incarceration, probation, etc). 	<p>Relief is mandatory. If petitioner is eligible for expunction, the court is required to provide it.</p> <p>*Both violent and nonviolent misdemeanors are eligible</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.</p> <p>Having previously been granted an expunction does not make the petitioner explicitly ineligible for expunction under 15A-145.</p>	<p>Form: AOC-CR-264 Cost: \$175 (but may file indigent fee waiver) Required Affidavits:</p> <ul style="list-style-type: none"> a. Petitioner affidavit stating: <ul style="list-style-type: none"> i. 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. ii. Petition is a motion in the cause in the case wherein the petitioner was convicted. iii. No restitution orders or civil judgments representing amounts ordered for restitution against him are outstanding. 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. <p>Notice: petition must be served on DA.</p>
Gang Offense Under 18 <u>NCGS 15A-145.1</u>	<ol style="list-style-type: none"> 1. 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. 2. No previous felony or misdemeanor convictions other than a traffic violation 3. Date of offense was prior to petitioner's 18th birthday. 4. At least 2 years have passed since the date of conviction. 5. Petitioner has completed all terms of criminal sentence. 6. No felony or misdemeanor convictions other than traffic offenses for two years from the date of conviction. 7. No outstanding restitution or civil judgments representing amounts ordered for restitution. 	<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: AOC-CR-269 Cost: \$175 (but may file indigent fee waiver) Required Affidavits:</p> <ul style="list-style-type: none"> c. Petitioner affidavit stating: <ul style="list-style-type: none"> i. 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. ii. Petition is a motion in the cause in the case wherein the petitioner was convicted. iii. No restitution orders or civil judgments representing amounts ordered for restitution against him are outstanding. d. 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. <p>Petition must be served on DA.</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
Dismissed Drug Charge Under Age 22 <u>NCGS 15A-145.2(a)</u>	1. Charge dismissed under G.S. 90-96(a) or (a1) diversionary program. 2. Not over 21 years of age at time of offense.*	*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.	Form: <u>AOC-CR-266</u> Cost: \$175 (unclear if can file indigent waiver) Required Affidavits: Petitioner affidavit stating has not been convicted of any other conviction. Affidavits of 2 others attesting to good reputation.
Dismissed Drug Charge Under Age 22 <u>NCGS 15A-145.2(a)</u>	4. Charge dismissed or finding of not guilty; a. Misdemeanor charge under Art 5, Chap 90 b. Felony charge under 90-95(a)(3) i. Prior to 2012, less than 1 gram of cocaine ii. 2012 and beyond, a controlled substance 5. Not over 21 years of age at time of offense.		Form: <u>AOC-CR-266</u> Cost: \$175 (unclear if you can file indigent fee waiver) Required Affidavits: none
Drug Conviction Under Age 22 <u>NCGS 15A-145.2(c)</u>	1. Conviction for: a. Misdemeanor Drug Possession (under Chapter 90, Article 5); b. Misdemeanor Drug Paraphernalia (under GS 90-113.22); OR c. Felony Possession under GS 90-95(a)(3)* 2. At least 12 months have passed since the date of conviction. 3. Petitioner was not over the age of 21 at the time of the offense. 4. Petitioner has either successfully completed drug program or will ask the court to waive this requirement. 5. Petitioner has no other felony conviction, misdemeanor conviction under Chapter 90, or any conviction related to controlled substances. ** 6. No prior expunction under 15A-145.2(c).	Silent as to whether multiple convictions occurring in same session of court may be treated as single conviction for expunction purposes. Judge may waive the drug education program requirement in extenuating circumstances. *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 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. **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, I firmly believe that this is an erroneous interpretation and that someone with a subsequent misdemeanor conviction unrelated to controlled substances (for example, misdemeanor larceny) would still be eligible for expunction. To discuss either of these interpretations feel free to call me at (919) 861-2061.	Form: <u>AOC-CR-266</u> Cost: \$175 (but may file indigent status fee waiver) Required Affidavits: None

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
Dismissed Charge Toxic Vapors/Drug Paraphernalia Charge Under 22 <u>NCGS 15A-145.3(a)</u>	<ol style="list-style-type: none"> 1. Charge dismissed under G.S. 90-113.14(a) or (a1) diversionary program. 2. Not over 21 years of age at time of offense.* 	<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: AOC-CR-268 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>
Dismissed Charge Toxic Vapors/Drug Paraphernalia Charge Under 22 <u>NCGS 15A-145.3(b)</u>	<ol style="list-style-type: none"> 1. Misdemeanor charge: <ol style="list-style-type: none"> a. Under Article 5A, Chapter 90 b. For possession of drug paraphernalia under GS 90-113.22 2. Charge dismissed or finding of not guilty; 3. Not over 21 years of age at time of offense. 		<p>Form: AOC-CR-268 Cost: \$175 (unclear whether you can file for indigent fee waiver) Required Affidavits: none</p>
Toxic Vapors/Drug Paraphernalia Conviction Under Age 22 <u>NCGS 15A-145.3(c)</u>	<ol style="list-style-type: none"> 1. Misdemeanor conviction under Chapter 90, Article 5A. 2. At least 12 months have passed since the date of conviction. 3. Petitioner was not over the age of 21 at the time of the offense. 4. Petitioner has either successfully completed drug program or will ask the court to waive this requirement. 5. Petitioner has no other conviction under Articles 5, 5A, or 5B of Chapter 90, or any other conviction related to controlled substances. ** 6. No prior expunction under 15A-145.3(c). 	<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"), I firmly believe that this is an erroneous interpretation and that someone with other 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: AOC-CR-268 Cost: \$175 (unclear if you can file for indigent fee waiver) Required Affidavits: None</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
Nonviolent Felony Under 18 <u>NCGS 15A-145.4</u>	<ol style="list-style-type: none"> 1. Conviction of a nonviolent felony * a. Multiple felonies may be treated as one conviction ONLY if convictions occurred in the same session of court. 2. Date of offense for felony conviction was prior to 18th b'day. 3. No prior misdemeanor or felony convictions, other than traffic violations. (see FAQ 10) 4. No subsequent misdemeanor or felony convictions, other than traffic violations, within 4 year waiting period. 5. At least 4 years have passed since the date of conviction. ** 6. The individual has fully completed his or her sentence (incl. probation) 7. The petitioner has no outstanding warrants or pending criminal cases 8. No previous expunctions under 15A-145, -145.1, -145.2, -145.3, -145.4, -145.5 9. Petitioner has performed 100 hours of community service since conviction and has a HS diploma or GED. 	<p>*The term nonviolent misdemeanor or nonviolent felony means any misdemeanor or felony EXCEPT:</p> <ul style="list-style-type: none"> A. a Class A - G felony or a Class A1 misdemeanor B. An offense that includes assault as "an essential element of the offense" C. An offense that requires sex offender registration (Article 27A, Chapter 14) D. Specified stalking offenses (see 15A-145.5(a)(4)) 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 F. Specified hate crimes (see 15A-145.5(a)(6) and 15A-145.5(a)(7)) G. Any felony offense in which a commercial motor vehicle was used in the commission of the crime <p>**In drafting the petition form, AOC has interpreted the statute to require a waiting period of 4 years from the date the sentence is completed (as opposed to the date of conviction). This interpretation is currently being challenged.</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>	<p>Form: AOC-CR-279</p> <p>Cost: \$175 (but may file indigent fee waiver)</p> <p>Required Affidavits:</p> <ul style="list-style-type: none"> a. Petitioner affidavit stating: <ul style="list-style-type: none"> i. Has good moral character since date of conviction ii. No convictions other than traffic violations*** iii. Details of 100 hrs of community service iv. Has a HS diploma or GED 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 <p>Notice: must provide notice to DA</p> <p>***This statute has a significant discrepancy. According to 15A-145.4(e), a person may not be granted an expunction if they have a conviction within the waiting period—however, a conviction after 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
Nonviolent Misdemeanor or Felony (Any Age) <u>NCGS 15A-145.5</u>	<ol style="list-style-type: none"> 1. One nonviolent felony or nonviolent misdemeanor conviction* <ol style="list-style-type: none"> a. Multiple convictions may be treated as one conviction ONLY if convictions occurred in the same session of court. 2. No other misdemeanor or felony convictions, other than traffic violations. 3. At least 15 years have passed since the date of conviction. ** 4. The individual has fully completed his or her sentence (incarceration, probation, etc). 5. The petitioner has no outstanding warrants or pending criminal cases 6. No previous expunctions under 15A-145, -145.1, -145.2, -145.3, -145.4, -145.5 	<p>*The term nonviolent misdemeanor or nonviolent felony means any misdemeanor or felony EXCEPT:</p> <ul style="list-style-type: none"> A. a Class A - G felony or a Class A1 misdemeanor B. An offense that includes assault as "an essential element of the offense" C. An offense that requires sex offender registration (Article 27A, Chapter 14) D. Specified stalking offenses (see 15A-145.5(a)(4)) E. Any felony offense in Chapter 90 that involves methamphetamines, heroin, or poss with intent to sell or deliver cocaine F. Specified hate crimes (see 15A-145.5(a)(6) and 15A-145.5(a)(7)) G. Any felony offense in which a commercial motor vehicle was used in the commission of the crime <p>**In drafting the petition form, AOC has interpreted the statute to require a waiting period of 15 years from the date the sentence is completed, rather than 15 years from the date of conviction. Many practitioners believe this is an inaccurate interpretation of the statute. A prospective petitioner 15 years beyond the date of conviction but not yet 15 years beyond the completion of his sentence should be aware of this issue and prepared to address it to the court.</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>	<p>Form: AOC-CR-281</p> <p>Cost: \$175 (but may file indigent status fee waiver)</p> <p>Required Affidavits:</p> <ul style="list-style-type: none"> a. Petitioner affidavit stating: <ol style="list-style-type: none"> i. Has good moral character since date of conviction ii. No convictions (other than traffic violations) since conviction iii. Petition is a motion in the cause iv. No outstanding restitution order 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 <p>Notice: must provide notice to DA.</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
Prostitution Offenses <u>NCGS 15A-145.6</u>	<ol style="list-style-type: none"> 1. Conviction for a prostitution offense: <ol style="list-style-type: none"> a. under GS §14-204 (after 9/30/2013) b. under GS §14-204(7) (prior to 10/1/2013) 2. No prior convictions for any violent felony or violent misdemeanor. * 3. Satisfies one of the following three criteria: <ol style="list-style-type: none"> a. Participation in the prostitution offense was a result of having been a trafficking victim 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 c. Petitioner received a conditional discharge pursuant to GS §14-204(b) 4. No subsequent misdemeanor or felony convictions, other than traffic violations. 5. No outstanding warrants or pending criminal cases 6. No outstanding restitution orders or civil judgments representing amounts ordered for restitution 	<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: AOC-CR-282</p> <p>Cost: \$175 (but may file indigent status fee waiver)</p> <p>Required Affidavits:</p> <ol style="list-style-type: none"> a. Petitioner affidavit stating: <ol style="list-style-type: none"> i. Petitioner has no prior conviction of a violent felony or violent misdemeanor, ii. Has been of good moral character since the date of the conviction of prostitution offense in question, iii. Has not been convicted of any felony or misdemeanor since the date of the conviction of the prostitution offense in question, iv. No restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding. 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 <p>Notice: must provide notice to DA</p>

Expunction Type/ Statute	Criteria	Additional Information	Filing Requirements
Charges Not Resulting in Conviction <u>NCGS 15A-146</u>	<p>1. Felony charge or misdemeanor charge was disposed of by a dismissal, finding of not guilty, or finding of not responsible.</p> <ul style="list-style-type: none"> 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. b. No requirement that the charges are related to the same transaction or occurrence—simply need to be within same 12 month period. <p>2. Petitioner has not been convicted of a felony.*</p> <p>3. Petitioner has not previously received an expunction under §§15A-145, -145.1, -145.2, -145.3, -145.4, -145.5, or -146.</p>	<p>Relief is mandatory. If petitioner is eligible, court is required to grant expunction.</p> <p>Two open questions:</p> <ul style="list-style-type: none"> A. Whether an individual who is charged with one offense but pleads guilty to a lesser offense is eligible for an expunction of the original charge as a dismissed charge? B. Is a charge that has been “dismissed with leave”—meaning that it can be reinstated at any time—eligible for expunction? <p>*Misdemeanor convictions do not affect eligibility for expunction under §15A-146.</p>	<p>Form: AOC-CR-264</p> <p>Cost: \$0, unless dismissal occurred as the result of the completion of a diversionary program, 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 of the charges have a date of offense within the same 12 month period OR all the dismissed charges have the same date of disposition.</p>
Identity Theft <u>NCGS 15A-147</u>	<p>1. The identity of the petitioner was used without permission of the petitioner and this use resulted in a charge(s) against the petitioner.</p>	<p>2. The charge(s) against the petitioner in this matter was:</p> <ul style="list-style-type: none"> i. Dismissed, ii. Finding of not guilty, OR iii. Conviction set aside 	<p>Form: AOC-CR-263</p> <p>Cost: \$0</p> <p>Required Affidavits: None.</p> <p>Must provide notice to DA.</p>
DNA Records <u>NCGS 15A-148</u>	<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"> A. Charge has been dismissed; B. Defendant has been acquitted of the charge; C. Defendant has been convicted of a lesser-included misdemeanor offense that is not an offense requiring a DNA sample; 	<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: AOC-CR-640*</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>
Pardon of Innocence <u>NCGS 15A-149</u>	<p>Received a pardon of innocence pursuant to NCGS 147-25.</p>		<p>Form: AOC-CR-265 Cost: \$0</p> <p>Must attach copy of pardon of innocence to petition.</p>

Statute	Criteria	Additional Information	Filing Requirements
Certificate of Relief <u>NCGS 15A-173</u>	<ol style="list-style-type: none"> 1. Convicted of no more than two Class G, H, or I felonies or misdemeanors in one session of court. 2. No other convictions for a felony or misdemeanor other than a traffic violation. 3. At least 12 months have passed since the individual completed his or her criminal sentence (including probation). 4. Individual is either: <ol style="list-style-type: none"> a. Engaged in, or seeking to engage in, a lawful occupation or activity, OR b. Has a lawful source of support. 5. No criminal charges are currently pending against the individual. 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. 7. Granting the petition would not pose an unreasonable risk to the safety or welfare of the public or any individual. 	<p>A certificate of relief is not an expunction but may provide several types of significant relief, including:</p> <ul style="list-style-type: none"> a. A petitioner's employer protection from negligent hiring liability. b. A petitioner's landlord protection from negligent leasing liability. c. Override automatic civil disabilities based on the criminal record (occupational licensing, etc.)—allow opportunity for discretion d. Viewed favorably in discretionary decisions. 	<p>Form: <u>AOC-CR-273</u></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>
Indigent Fee Waiver/Civil Affidavit of Indigency	<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"> 1. Food stamps 2. Aid to Families with Dependent Children (AFDC) 3. Supplemental Security Income (SSI) 4. Representation by legal services organization (or private attorney working on behalf of legal services organization) <p>An individual not currently receiving one of these benefits, must submit a 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>Form:</p> <p><u>AOC-G-106</u></p> <p><u>AOC-CV-226</u></p> <p>Cost: \$0</p> <p>Required Affidavits:</p> <p>An individual may be required to provide supporting documentation.</p>

How to Read an ACIS Criminal Record 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 (see FAQ 1) or by using a public terminal. 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.

Disposition	Name & Address		Offense Description (if conviction)		File Number [NOTE: If "CR" then heard in district court, if "CRS" then superior court]					
Date of Offense	County of Disposition	Date of Arrest	Offense Description (if dismissed charge)	Arresting Agency	Date of Disposition					
910 WAKE DISPOSED WARRANT	DURHAM NC	DEF ATTY:	ICA INQUIRY 01 R S DOB/AGE F DL#: CIT#: CSLR: CSLRC: TRIAL DATE: 112598	PILM: FILING DATE: 070298						
				14-72(A) CPD ISSUED: 070198 SERVED: 070198 MOTIONS DATE: DISP DATE: 112598						
				RSONCO: GANG REL: DV CV: N						
CHG/ARRN OFFN: F FELONY LARCENY	OFFN DATE: 070198	ARRN DATE: 070198	PLEA VER MOD: GL GU JU	FINE: \$ 00100.00	COSTS: \$.00	WCC: \$ 725.00	REST: PM	JUDGE: NO	PAID: 052500	TO-BE-PAID:
COMPLAINANT: [REDACTED]	CONT. D: 00 S: 00 C: 02 NR: 00		SENT LEN: 030 D -	SENT TYPE: C				CONS P/JGMT:		
			PROB: 018 M	SUPERVISED WITHDRAWN:				APPEALED TO SUPERIOR:		
			AREA CD: ACCD: HWY:	V LIC:				TRANS TO SUPERIOR:		
			CDL: N CMV: N HAZ: N TRP/DIST: V ST:	V TYP:				APPSELLATE:		
			PROBPAYLATER							
ARREST DATE: 070198 CHECK DIGIT: SIDE: LID: ADDL CHARGES: NEXT#: PF2 - NAME INQUIRY										

Common ACIS Abbreviations

CPD	City Police Department	NP	No Probable Cause
CR	Criminal District Court	OF	Offense Date
CRS	Criminal Superior 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	SFF	Sheriff's Department
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>

STATE OF NORTH CAROLINA		File No. 98CR 0460	Microfilm No(s). (Official Use Only)
WAKE County		In The General Court Of Justice <input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division	
STATE VERSUS		PETITION AND ORDER OF EXPUNCTION UNDER G.S. 15A-145.5 (NONVIOLENT FELONY OR NONVIOLENT MISDEMEANOR) G.S. 15A-145.5, 15A-150	
Name And Address Of Petitioner (Type Or Print) JANE E. DOE 123 MAIN STREET DURHAM, NC 27701			
Drivers License No.	State	Race BLACK	Sex F
Date Of Birth 01/23/2045	Full Social Security No. 123-45-6789		
NOTE TO PETITIONER: 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 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)	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. 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. 98CR 0460	Date Of Offense 07/01/1998	Date Of Arrest 07/01/1998	Offense Description (M) LARCENY
			Disposition GUILTY
PETITION/MOTION TO EXPUNGE			
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. At least fifteen (15) years have passed since the later of the date of conviction or when my active sentence, probation, or period of post-release supervision resulting from the offense(s) listed above was completed. My sentence, period of probation, or period of post-release supervision was finally completed on (date) _____. 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 Justice, a search by the Department of Justice 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 01/25/2014	Name (Type Or Print) JANE E. DOE		Signature <input checked="" type="checkbox"/> Petitioner <input type="checkbox"/> Petitioner's Attorney
CERTIFICATE OF SERVICE			
I certify that a copy of this motion was served by: <input type="checkbox"/> delivering a copy personally to the prosecutor. <input 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	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	
NOTE TO CLERK: Regardless of when the reports are returned by the SBI and AOC, as provided on the reverse, the hearing may not be scheduled earlier than 30 days after service of the petition on the prosecutor.			
REQUEST BY JUDGE			
To The State Bureau Of Investigation, Attn: CIIS 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. 9/13 © 2013 Administrative Office of the Courts		(Over)	

910 WAKE DISPOSED WARRANT	ICA INQUIRY 01 08CR 0047 FILM: R S DOB/AGE CR FILING DATE: 013008 B M DL#: CIT#:	NC TRIAL DATE: 070708 CSLR: PM VRA: 14-72(A) OTH ISSUED: 012908 SERVED: 012908 MOTIONS DATE: DISP DATE: RSNCNC: GANG REL: DE CV: N
RALEIGH NC 27610 DEF ATTY: [REDACTED] CHG/ARRN OFFN M MISDEMEANOR LARCENY COMPLAINANT: [REDACTED]	PLEA VER MOD FINE COSTS WCC REST JUDGE PAID TO-BR-PAID SENT LEN: PROB: AREA CD: ACCO: HW: V LIC: CDL: N CMV: N HAZ-N TRP/DIST: V ST:	SENT TYPE: WITHDRAWN: CONS F/JGMT: APPEALED TO SUPERIOR: TRANS TO SUPERIOR: V TYP: APPELLATE:
ARREST DATE: 012908 CHECK DIGIT: [REDACTED] SID: [REDACTED] LID: NEXT#: [REDACTED] NAME INQUIRY ADDL CHARGES		

NOTE: Petition for expunction must be heard in same division (District (CR) or Superior (CRS)) as the original charge.

STATE OF NORTH CAROLINA WAKE County		File No. 08CR 0047	Microfilm No(s). (Official Use Only)												
STATE VERSUS		In The General Court Of Justice <input checked="" type="checkbox"/> District <input type="checkbox"/> Superior Court Division													
<p>Name And Address Of Petitioner (Type Or Print) JOHN Q. ANONYMOUS 23 MAIN STREET RALEIGH, NORTH CAROLINA 27611</p> <p>Driver's License No. State Race Sex NC BLACK M</p> <p>Date Of Birth Full Social Security No. Age At Time Of Offense 01/01/1985 987-65-4321 33</p>		<p>PETITION AND ORDER OF EXPUNCTION UNDER G.S. 15A-145(a) AND G.S. 15A-146 G.S. 15A-145(a), 15A-146, 15A-150</p> <p>Name And Address Of Petitioner's Attorney For Expunction Petition</p>													
<p>NOTE TO PETITIONER: 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 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.</p> <p>Name And Address Of Arresting Agency RALEIGH POLICE DEPT 6716 SIX FORKS ROAD RALEIGH NC 27611</p>		<p>Name And Address Of Other Agency (if any)</p> <p>Name And Address Of Other Agency (if any)</p>													
<p><input type="checkbox"/> 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.</p> <table border="1"> <thead> <tr> <th>File No.</th> <th>Date Of Arrest</th> <th>Offense Description</th> <th>Date Of Offense</th> <th>Disposition</th> <th>Date Of Disposition/Conviction</th> </tr> </thead> <tbody> <tr> <td>08CR0047</td> <td>01/29/2008</td> <td>MISDEMEANOR LARCENY</td> <td>11/21/2007</td> <td>DISMISSED</td> <td>07/08/2008</td> </tr> </tbody> </table>				File No.	Date Of Arrest	Offense Description	Date Of Offense	Disposition	Date Of Disposition/Conviction	08CR0047	01/29/2008	MISDEMEANOR LARCENY	11/21/2007	DISMISSED	07/08/2008
File No.	Date Of Arrest	Offense Description	Date Of Offense	Disposition	Date Of Disposition/Conviction										
08CR0047	01/29/2008	MISDEMEANOR LARCENY	11/21/2007	DISMISSED	07/08/2008										
<p>PETITION/MOTION TO EXPUNGE</p> <p><input type="checkbox"/> I hereby move for an expunction pursuant to G.S. 15A-145(a) and certify as follows:</p> <ol style="list-style-type: none"> I was convicted of a misdemeanor(s), other than a traffic violation, the file number(s) of which is/are set out above. 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)). I have not previously been convicted of any felony or misdemeanor, other than a traffic violation. Those affidavits and statements required by G.S. 15A-145(a) are incorporated and are attached. I have no outstanding restitution orders, or civil judgments representing amounts ordered for restitution, against me. I have served a copy of this form on the district attorney. <p><input type="checkbox"/> 7. There is a civil revocation record that resulted from the offense(s) I am seeking to expunge.</p> <p>Service of this petition is accepted by the <input type="checkbox"/> Date Service Accepted <input type="checkbox"/> Name Of Person Accepting Service (Type Or Print) <input type="checkbox"/> Signature Of Person Accepting Service (Applies only to G.S. 15A-145.)</p> <p><input checked="" type="checkbox"/> I hereby move for an expunction pursuant to G.S. 15A-146 and certify as follows:</p> <ol style="list-style-type: none"> I was charged with a misdemeanor(s) or felony(ies) (or an infraction under G.S. 18B-302(l) prior to December 1, 1999), the file number(s) of which is/are set out above. The charge(s) listed above was/were disposed of by a dismissal, finding of not guilty or finding of not responsible. I have not previously been convicted of a felony. 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) <input checked="" type="checkbox"/> have not received a previous expungement under G.S. 15A-146. <input type="checkbox"/> 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. <p><input type="checkbox"/> 5. There is a civil revocation record that resulted from the offense(s) I am seeking to expunge.</p> <p>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 Justice and a search of the confidential record of expunctions maintained by the NC Administrative Office of the Courts.</p> <p><input checked="" type="checkbox"/> 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. NOTE TO CLERK: If this box is checked, do not assess the \$175.00 fee.</p>															
Date 12/09/2013	Name (Type Or Print) JOHN Q. ANONYMOUS	Signature	<input type="checkbox"/> Petitioner <input type="checkbox"/> Petitioner's Attorney												
<p>REQUEST BY JUDGE</p> <p>To The State Bureau Of Investigation, Attn: CIS 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.</p> <p>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.</p>															
Date AOC-CR-264, Rev. 9/13 © 2013 Administrative Office of the Courts	Name Of Presiding Judge (Type Or Print)	Signature Of Presiding Judge (Over)													

NOTE: Be sure to include the arresting agency information

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.

*****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

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

A: Print here the county where the conviction occurred

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.

IN THE GENERAL COURT OF JUSTICE
[N] COURT DIVISION

[B]

)
DEFENDANT’S
AFFIDAVIT

C: Print here Petitioner’s full name.

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

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.

L: Print your name.

H: Day completed affidavit (must be same day notarized).
I: Month completed affidavit.
J: Year completed affidavit.

[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/soskb.web.mvc/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

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

B: 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"

IN THE GENERAL COURT OF JUSTICE
[B] COURT DIVISION

[C]

) **AFFIDAVIT OF
GOOD CHARACTER**

D: Print here Defendant's full

E: Print here Affiant's full name.

C: 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

The Affiant, [E], 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 the other Affiant by blood or marriage.
4. I have known the Defendant for [F] years.
F: Print here the number of years affiant has known defendant.
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 [G] day of [H], 201 [I].

I: Year

G: Day Affiant completed affidavit

H: Month

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/soskb.web.mvc/NotaryPublic/Search>

NORTH CAROLINA

_____ COUNTY

IN THE GENERAL COURT OF JUSTICE

_____ COURT DIVISION

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: _____

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. 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: http://ncdoj.gov/getdoc/43801f2b-e869-48ca-90c7-e323301a791d/Right-to-Review_Read-Print-ONLY.aspx
 - iii. 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/files/pdf/pdf-0096-fair-credit-reporting-act.pdf>
 - iv. 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 county 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, 2014, this process took 4 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 “calendarizing”) 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 offenses 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 order is delivered to the arresting agency and then the SBI—at which time the record is actually destroyed. As of January 1, 2014, the time between the order being granted and the record actually being expunged is approximately 4 months. Again, due to additional SBI staffing, this wait time is expected to decrease. The total wait time from the filing of the petition to the actual expunging of a criminal record is approximately 9 months, as of January 1, 2014.

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. 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.

7. 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.

8. 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 nationwide background report from the Federal Bureau of Investigation.

9. How are Prayers for Judgment Continued (PJC)s treated for purposes of expunction?

- A. There is no definitive answer to this question. PJC's are often treated as convictions because the defendants have admitted guilt (even while the judgments have been withheld). Accordingly, it is likely a court would treat a PJC as a conviction for purposes of expunction—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). For more information on expunction of PJC's, please see this article by the UNC School of Government: <http://nccriminallaw.sog.unc.edu/?p=1453>. A similarly open question of law is whether a PJC makes an individual ineligible for expunction of a separate criminal record because many expunction statutes require the petitioner to have "no other

conviction” or “no previous conviction.” If the court treats the PJC as a conviction for purposes of eligibility for expunction of a separate criminal record, then the PJC may make the petitioner ineligible for expunction. For a general discussion of this issue, please reach out to Daniel Bowes at (919) 861-2061.

10. What are “misdemeanor traffic violations”?

- A. Based on the broad 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. For a general discussion of this issue, please reach out to Daniel Bowes at (919) 861-2061.

11. Where an individual is charged with an offense and pleads guilty to a lesser included offense (ex. charge offense: (F) Possession with Intent to Sell or Distribute, conviction offense: (M) Possession of a Controlled Substance), is the original charge offense expungeable as a dismissed charge?

- A. Probably. While there is currently no case law on this issue, there is a growing consensus that in this common situation the charging offense has, in essence, been dismissed and therefore is exungable as a dismissed charge under NCGS 15A-146. For a general discussion of this issue, please reach out to Daniel Bowes at (919) 861-2061.

12. 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 Daniel Bowes for a general discussion of this issue at (919) 861-2061.

13. 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. Please be aware that the age of juvenile jurisdiction may change in the near future as there are currently several bills before the General Assembly to “raise the age” of juvenile jurisdiction.

14. 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.

15. 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.

16. 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>.

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

- A. Many of the 1.6 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. 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 Dept 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>