

SWAIN COUNTY

NCGS §15A-146 Expunction Petitions

- **Criminal records in general.** In North Carolina, a criminal charge stays on a person's criminal record. There is no time limit for how long a charge stays on the official records. Every charge stays on the records, even if the charge is thrown out, or *dismissed*. The same is true if a judge decides that a person is *not guilty*. The charge stays on the official records.
- **Dismissed or Not Guilty records.** The courts may be able to expunge a record if a judge decided that a person was *not guilty*, or if a charge was *dismissed*.

The law about that is in Chapter 15A of the North Carolina General Statutes at section 146. The abbreviation for that law is N.C.G.S. § 15A-146.

- **Requirements.** A person who is age 18 or older may be granted an expunction under N.C.G.S. § 15A-146 only if the person has no felony conviction anywhere.
- **Expunction, or removal of records.** *Expunction* is the legal term for removing a court record. North Carolina laws allow some offense records to be expunged.
- **Petition, the expunction request form.** To ask for an expunction, a person must file a document that is called a *petition*.

- ▶ To ask for expunction of **dismissed** charge records, a person must use form **AOC-CR-287**.
- ▶ To ask for expunction of **not guilty** charge records, a person must use form **AOC-CR-288**.

A person can file both types of petition at the same time. Blank forms are included with these materials and are posted at <http://www.nccourts.gov>

- ▶ **Strongly recommended.** If you have an open criminal case, do not file a petition until the case is closed. Complete probation before you file a petition. Do not file a petition until you have paid the courts all criminal court costs, jail fees, fines, restitution, appointed lawyer fees, or a court judgment for those costs, fines, restitution and fees.

▶ **The court staff cannot help you choose or complete any form.** ◀

- **Where to file the petition.** A petition must be filed in the county where the court case was decided. You must take your completed documents to the Clerk of Court's office. The Swain County courthouse is at 101 Mitchell Street in Bryson City. The main telephone number for the Clerk of Superior Court is 828.488.7400.
- **You must call ahead** to find out when you may ask a judge to review your petition(s).

If your case was decided in superior court, you must take your documents to superior court.

If your case was decided in district court, you must take your documents to district court.

- Follow the court's instructions about when to go to the courthouse. Take a Photo ID and **three** completed sets of your documents to the clerk. Ask to be directed to the correct courtroom.
- Wait for a judge to be available. The judge will review each petition and decide whether to sign it. If the judge signs a petition, that will start the expunction process.
- Take the signed documents to the clerk. When you give the documents to the clerk, the clerk will stamp two sets and keep those. Keep a set of the stamped documents for your own records.
- **Fees.** A copy of the filing fee statute, or law is included with these materials. You should take that with you when you file your petition(s) at the clerk's office.

There is no court filing fee to petition to expunge a *Not Guilty* offense record.

There is no court filing fee to petition to expunge a *dismissed* charge record **unless** a charge was dismissed because you had a deferred prosecution agreement or a conditional discharge and dismissal.

In either of those situations, there is a **\$175 filing fee**. The fee must be paid with cash or a Money Order or certified bank check payable to the Swain County Clerk of Superior Court.

● ***Indigent, or low income status request.*** Any person may ask to file an expunction case as an Indigent, or low income person. An Indigent person does not have to pay the filing fee. The form for that request is **AOC-G-106**. If you ask for low income status, you must submit three request forms with your expunction petition(s). A blank form AOC-G-106 is included with these materials.

Before you file the form with the clerk, a Notary Public must witness your signature on form AOC-G-106

● **Approval.** By law, the clerk must grant the request and waive the fee *if* a person *submits proof* that she or he gets SSI benefits, or Work First Family Assistance, or SNAP (Food and Nutrition Services) benefits. Attach a copy of all of your proof to the form.

Ask whether the clerk is authorized to approve the form before you deliver your documents to the judge, or whether a judge must review the form.

● If you do not get any of those benefits, you may still submit form AOC-G-106. The clerk can direct you to complete another form. It is an *Affidavit of Indigency*. Blank affidavits are included with these materials. **A Notary Public must also witness your signature on the Affidavit.** The court will decide about your request on an individual basis.

● **File documents by mail.** If you cannot take your petition(s) to the courthouse, you may mail the three sets of documents. The mailing address is below. Enclose a letter and a self-addressed, stamped envelope. In the letter, ask the clerk to mail a set of stamped copies back to you.

You must call the clerk to confirm these mailing instructions.

Swain County Clerk of Superior Court
ATTN: Expunctions
PO Box 1397
Bryson City NC 28713

If you file your documents by mail and you must pay a fee, you must enclose a Money Order or certified bank check. Make that payable to the Swain County Clerk of Superior Court.

- **Expunction petition processing.** When a judge signs a petition, the judge directs the State Bureau of Investigation (SBI) to perform a state and national criminal record check. The judge also directs the Administrative Office of the Courts (AOC) to review their records.

The SBI and AOC reviews take several months. The clerk of court does not control how long that process takes.

The results of the reviews will be mailed to the county clerk of court. The clerk will give the results to a judge.

The clerk will not notify you when the results are received by the court. You will not have to go to court for a hearing unless there is a problem with a petition.

- **It is your responsibility to check** about the status of your petition(s). If you have not gotten an expunction order three months after you filed the documents, you should call the clerk.

**After you file the petition(s)
if your telephone number or mailing address changes,
you must give the clerk of court your new information in writing.**
Please see the form letter that is included with these materials.

- **Court decision.** The judge will decide whether to grant or deny your expunction petition(s).

The clerk of court will mail an official copy of the judge's order(s) to you. You may expect the whole process to take about six months, from the time you file a petition until you get the order.

- **Legal result of expunction.** Once an order is granted, an individual can accurately and truthfully say that she or he was not convicted, arrested or charged with the expunged offense.

**Please be sure to keep the expunction order(s).
You will not be able to get another copy from the courthouse.**

- **Check the court records if your petition(s) is granted.** If the judge grants your petition(s), the clerk will send the expunction order(s) to you, the SBI, the AOC, and any law enforcement agency that you list on your petition as an “Arresting Agency.”

The expunged record is removed by local law enforcement agencies only if you write those addresses on your petition(s).

Within the following six months, the record should be removed from the court records, all state law enforcement databases, and the SBI database.

CAUTION

Use of these materials is at your own risk. There is no way to guarantee the success of your petition. In no event will Legal Aid of North Carolina or anyone contributing to the production of these materials and instructions be held responsible for any damages resulting from the use of the materials or instructions provided here.

NOTICE: The expunction of your case information from the court records and records of other state and local government agencies ***does not*** guarantee that the information will be removed from all other sources.

Private companies routinely get copies of criminal records from state and local criminal justice agencies. Only some private businesses have a duty to remove your case information upon receiving notice of the expunction order, and there may be a delay between entry of the order of expunction and deletion from those business records.

The duty to expunge does not apply to all private businesses.

If a private entity distributes information about your expunged case, contact the private entity to learn which government agency was the source of the information.

Then contact that government agency to learn whether the expunction order was received there.

If the private entity claims that the AOC was the source of the information, you may contact the **AOC's Remote Public Access office** at rpa@nccourts.org or at 919.890.2220 to investigate the entity's claim.

Filing fee statute

§ 15A-146. Expunction of records when charges are dismissed or there are findings of not guilty.

(d) A person charged with a crime that is dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge and who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent. (1979, c. 61; 1985, c. 636, ss. 1-7; 1991, c. 326, s. 1; 1997-138, s. 1; 1999-406, s. 9; 2001-108, s. 2; 2001-282, s. 1; 2002-126, s. 29A.5(c); 2005-452, s. 1; 2007-509, s. 2; 2009-510, s. 5(a), (b); 2009-577, ss. 3.1, 8, 9; 2011-145, s. 19.1(h); 2012-191, s. 4; 2013-360, ss. 17.6(e), 18B.16(f); 2014-100, s. 17.1(o); 2014-119, s. 2(d); 2017-186, s. 2(tt); 2017-195, s. 1.)

Sample Letter to the Clerk of Court Updated Contact Information

DATE

Sample County Clerk of Superior Court
address
address

RE: Updated contact information, *pro se* expunction petitioner

Dear Clerk of Superior Court:

Please accept this letter as notice of my new contact information. I have filed one or more expunction petitions.

I have enclosed a photocopy of my petition(s).

My new mailing address is:

_____ Apt. Number _____

_____ Zip Code _____

My new telephone number is: (____) _____

Thank you.

Respectfully,

(your signature)

Printed name _____

KEEP A COPY OF THE LETTER YOU SEND or DELIVER TO THE CLERK OF COURT