

WATAUGA 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 a petition.** A petition must be filed in the county where the court case was decided. Complete two sets of petition documents. Keep one set for your own records.
- By 4:30 p.m., take a Photo ID and your completed documents to Suite 13, Room 117 at the Watauga County courthouse. The courthouse is at 842 West King Street in Boone. The main telephone number for the Clerk of Superior Court is 828. 268.6600.
- When you give the documents to the clerk, ask for a note that confirms that you filed the documents.

- **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 Watauga County Clerk of Superior Court.

Payment by credit card is accepted if your name on your Photo ID and your credit card are the same. The courts do not accept personal checks.

- **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. It is best to call in advance and ask the clerk's office about what other proof to take with you.
- 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. That is the *Criminal Affidavit of Indigency*, form **AOC-CR-226**. **A Notary Public must also witness your signature on the Affidavit.** The form is included with these materials. 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 two sets of documents. Enclose a letter and a self-addressed, stamped envelope. In the letter, ask the clerk to mail a confirmation of filing back to you. If you have questions about mailing, please call the clerk.

Watauga County Clerk of Superior Court
ATTN: Expunctions
842 West King Street Suite 13 Room 117
Boone NC 28607

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 Watauga County Clerk of Superior Court.

- **Expunction petition processing.** The clerk will give your documents to a judge. The judge will review each petition and decide whether to sign it. If the judge signs a petition, that will start the expunction process.

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.

- **It is your responsibility to check** about the status of your petition(s). If you have not gotten a court hearing notice 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 hearing and decision.** If you must report to court for a hearing, clerk will inform you about the hearing date. At the hearing, a judge may ask you questions, and will then decide whether to grant or deny your expunction petition(s).

The clerk of court will mail the judge's order(s) to you. You may expect the whole process to take three months or more, 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 a copy from the courthouse.**

- **Check the court records if your petition is granted.** If the judge grants your petition, the clerk will send the expunction order to you, the SBI, the AOC, NC Department of Public Safety Combined Records Section, NC Division of Motor Vehicles (when applicable), NC Department of Adult Correction and Juvenile Justice, and any local 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