

## NORTH CAROLINA EXPUNCTION LAWS

**Criminal and Traffic Offense Records.** A person's North Carolina criminal record includes records of traffic offenses, criminal charges, arrests, dismissals, indictments, convictions, appeals, and more.

The official records are kept by the state court system and are not confidential. A criminal record is a public record. Unless and until a court grants permission, criminal offense records are not changed or removed from public record in any way. *Expunction* is the name of the legal process for removing a criminal record. Sometimes you will see people use the term *Expungement* as well. Both terms are talking about the same process. Similarly, the actual act of removing a criminal offense record can be referred to as *Expunct* or *Expunge*. Again, the two terms mean the same thing.

A person who seeks expunction must file a *Petition* (request). That person is called a *Petitioner*.

**The Expunction Process.** A Petition must be filed at the Office of the Clerk of Superior Court in the county where the charge or offense took place that the Petitioner is requesting to expunge. The Petition is reviewed by a local judge, by the Administrative Office of the Courts (AOC), by the State Bureau of Investigation (SBI), and by local law enforcement agencies. In some cases this review process may take over 6 months to complete.

**Appeal.** If the local court denies the Petition, it appears that a person may appeal that decision. The appeal process is complex and generally, a person should seek the help of a lawyer.

**Many types of offense records cannot be expunged.** Expunction is granted in very limited situations. Generally, expunction is not granted if a person has had a prior felony conviction anywhere, including a conviction in a tribal or military court. Only a few types of felony offense records can be expunged. Most expunction laws do not apply to traffic violation records. In some situations, it is possible to have driving privileges restored after expunction is granted.

If a person has been granted an expunction, she or he may be disqualified from getting another expunction in North Carolina.

**Juvenile Records.** Individuals below age 16 may have offense records. Juvenile records are sealed and are *not* available to the public. Some juvenile records can be expunged. A person must be age 18 or older in order to seek a juvenile record expunction. In these situations it would be beneficial to seek the assistance of a lawyer who specializes in criminal law.

**General Requirements.** An individual who seeks record expunction must be age 18 or older. Generally, a person must have no pending criminal charges and must have completed any period of parole or probation.

In some situations, it may be technically possible for a court to grant expunction even if a person has pending charges or has not completed parole or probation. That is very rare.

A person must have no unpaid restitution or court fees or fines. In some situations, it is technically possible for a court to grant expunction even if payment is owed. That is very rare.

**North Carolina criminal record expunction is possible in the following situations.**

**YOUNG FIRST OFFENDERS**

- An individual may be eligible for expunction of a *Misdemeanor* conviction **if**
  - the individual was below age 18 on the date of offense, and
  - two years have passed since the date of conviction;
  - other than traffic violations, the person had no prior misdemeanor or felony conviction;
  - other than traffic violations, during the two year period the person had no other felony or misdemeanor conviction.
  - Two *Affidavits* (sworn statements) about the Petitioner's good character are required and must be signed by persons who are not related to the Petitioner or each other.
  - A person *may* be eligible for record expunction even if a prior expunction was granted.
  
- A person may be eligible for expunction of a *Class H Felony gang offense* **if**
  - the person was below age 18 on the date of the offense, and
  - two years have passed since the date of conviction;
  - other than traffic violations, the person had no prior misdemeanor or felony conviction;
  - other than traffic violations, during the two year period the person had no other misdemeanor or felony conviction.
  - Two *Affidavits* are required.
  
- An individual may be eligible for expunction of certain *Nonviolent Felony* offenses **if**
  - the individual was below age 18 on the date of the offense, and
  - four years have passed since the date of conviction;
  - the person has a high school diploma or a GED;
  - the person has performed 100 hours of community service;
  - other than traffic violations, the person had no prior misdemeanor or felony conviction;
  - other than traffic violations, during the four year period the person had no other misdemeanor or felony conviction.
  - Two *Affidavits* are required.
  
- A person may be eligible for expunction of a *Misdemeanor Possession of Alcohol conviction* **if**
  - the person was below age 21 on the date of the offense, and
  - two years have passed since the date of conviction;
  - other than traffic violations, the person had no prior misdemeanor or felony conviction;
  - other than traffic violations, during the two year period the person had no other misdemeanor or felony conviction.
  - Two *Affidavits* are required.

- An individual may be eligible for expunction of certain, specific offenses if she or he was below age 22 on the date of the offense, with regard to

(a) misdemeanor or felony *Controlled Substance* offenses **or**

(b) misdemeanor *Toxic Vapors* or *Drug Paraphernalia* offenses, **if**

- certain charges were *dismissed*
- and two *Affidavits* are required

**or**

- certain charges were *dismissed* or a “not guilty” decision was made
- No Affidavits* are required

**or**

- certain misdemeanor *Toxic Vapors /Drug Paraphernalia convictions* took place **or** some misdemeanor or felony drug-related *convictions* took place

and a drug education program has been completed or a waiver request is pending;

and the person had no prior conviction related to controlled substances;

and the person had no prior, particular expunction related to controlled substances;

and 12 months have passed since the date of conviction.

*No Affidavits* are required.

<b>ADULT INDIVIDUALS OF ANY AGE</b>
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- A person is age 18 or older and is a victim of *Identity Theft or Mistaken Identity*, **if**
  - the person’s identity was used without permission, and as a result she or he was charged or convicted, and
  - the charge was dismissed or a “not guilty” decision was made, **or**
  - the conviction was set aside
  
- An individual is age 18 or older and was *charged but not convicted* of a misdemeanor or felony offense, **if**
  - the charge or charges were fully and finally dismissed, or a “not guilty” or “not responsible” decision was made, and
  - the individual has never been convicted of a felony.
  - This expunction can be used for all dismissed, “not guilty” or “not responsible” charges on the person’s record, regardless of when the charges occurred.
  - This expunction can be used multiple times.

- A person is age 18 or older and was convicted of certain nonviolent misdemeanor or felony offenses in the same court session, **if**
  - five years have passed since the date of conviction for a **misdemeanor** offense;
  - other than traffic violations, during the five year period the person had no other misdemeanor or felony conviction.
  - Two Affidavits are required.

**or**

- Ten years have passed since the date of conviction for a **felony** offense;
  - Other than traffic violations, during the ten year period the person had no other misdemeanor or felony conviction.
  - Two Affidavits are required.
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- An individual age 18 or older receives a *Pardon of Innocence*
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- An individual is age 18 or older and was convicted of certain *Prostitution* offenses, **if**
    - the person had no prior conviction for any violent felony, or any violent misdemeanor, or any Prostitution offense;
    - other than traffic violations, the person had no other misdemeanor or felony conviction;
    - three years have passed since the date of conviction or the person's serving of a sentence, whichever is later, **or**
    - involvement in the Prostitution offense was the result of the person being a victim of human trafficking, **or**
    - the person had a particular Conditional Discharge.
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- A person is age 18 or older and her/his *DNA samples* may be expunged from the State databank, **if**
    - the charge was dismissed, **or**
    - the person was acquitted of the charge, **or**
    - the person was convicted of a lesser-included misdemeanor offense and the DNA sample is not required for conviction of the lesser offense.

## NORTH CAROLINA CERTIFICATE OF RELIEF

A Certificate of Relief is a court order that may help you if your criminal record is causing problems when you try to get housing, a job, or a license for a job.

The court order states that you have done all that you were required to do after you were sentenced. It states that you do not pose an unreasonable risk to anyone's safety or welfare, and that you may be considered for a job or occupational license.

**NOTICE:** A Certificate is *not* a pardon. It does *not* change any offense record.  
A Certificate does not require anyone to give you a lease.  
A Certificate does not require anyone to hire you, or give you a license.

- **Eligibility.** You may ask for a Certificate if you have
- 1 misdemeanor or 1 Class G, H, or I felony conviction, or
  - 2 misdemeanor or 2 Class G, H, or I felony convictions *in the same session of court.*  
**and**
- You have not violated any terms of the sentence;
  - You have no outstanding or pending criminal charges;
  - You are employed or seeking employment, or you are getting lawful support; and
  - 12 months have passed after you completed all requirements of your sentence;

► **Documents.** In order to ask for a Certificate, you must file a Petition (request). There is no filing fee. The official Petition form and instructions are free and are available at the Office of the Clerk of Superior Court in every county.

The Petition form and official instructions are on the internet. The form is at <http://www.nccourts.org/Forms/Documents/1273.pdf> and the instructions are at <http://www.nccourts.org/Forms/Documents/1396.pdf>.

► **Where to file the Petition.** You must file your completed, signed Petition at the Office of the Clerk of Superior Court in the county where the conviction took place.

Do not attach any document or paper to the Petition form. You should keep a photocopy of your filed Petition for your own records. You should be sure to give the Clerk a reliable mailing address to use in sending you any notices about court.

► **The pre-hearing process.** Once you file the petition, the Clerk of Court will inform the District Attorney. The Clerk may schedule a hearing that will take place in three weeks or later.

The District Attorney will tell any person who was a victim of the offense(s) that you have filed a Petition. The crime victim(s) have the right to speak at the hearing, or may file a written statement with the court.

► **The hearing.** A judge, clerk, or magistrate will review your Petition at the hearing, and take your testimony. The court will consider crime victim statements or testimony. The District Attorney has the right to speak at the hearing.

- **Documents at the hearing.** You may wish to offer the court some documents that support your Petition. You do not have to do so. If you do want to offer documents, you should have three sets of photocopies. One set is for you, one set is for the court, and the third is for the District Attorney.

You may offer documents that show that you met sentencing requirements, or documents that show that you are employed or looking for work. You also might wish to offer Affidavits from witnesses who confirm that you are a person of good character. An *Affidavit* is a written statement that a person signs under oath, and under penalty of perjury.

► **The decision.** The court will hear the statements, review the evidence, and make a decision about your Petition. The court may grant your Petition.

The court may deny your Petition, or may order you to meet certain conditions and then file a Petition again. You must wait 12 months before filing another Petition.

**NOTICE:** A Certificate of Relief does **not** change your offense record. It is **not** a pardon.

A Certificate does **not** change your status or any requirements related to the following.

- Sex Offender Registration
- Firearms Possession
- Driving license or revocation
- Federal law restrictions
- NC Constitution restrictions
- North Carolina employment in law enforcement, corrections, or probation work
- North Carolina employment as a prosecutor or investigator with a District Attorney or with the NC Department of Justice

## Employers for Ex-Offenders

Sometimes it may be hard to find a job because of your record, but below is a list of companies who hire Ex-Offenders/Ex-Felons, and will help you get back on your feet to employment and bettering yourself for the community.

Allied Van Lines

Jiffy Lube

American Express

Jim Griffin Roofing

Anderson Pressure Washing

K&W Cafeteria

Applebees

Kohls

Aramark Food Services

Longhorn Steakhouse

AT&T

Macy's

Avon Products

McDonalds

Best Western

Mid America Metals

Budget Rent-A-Car

Pepsi Co.

Compaq

Petsmart

Dell

Pritchard Sports (Bobcats Arena)

Dunkin Donuts

Red Robin

Dupont

Ross Dress for Less

Exxon Mobil

Sears

Firestone Tire & Rubber Co.

Shell Oil Co.

Frito-Lay

Sony

General Electric

Staff Masters

Golden Corral

Target

Goodwill

Tyson Foods

Hanes

U.S. Cellular

Harris Tire Co.

Verizon Communications

Hilton Hotels

Walgreens

IBM

Walmart

IHOP

Xerox

# Former Offender Initiative

NC Department of Commerce, Division of Workforce Solutions

The Former Offender Initiative (FOI) was created to ensure job seekers with criminal records are provided the resources they need to overcome the barriers to employment they face due to their record. The following services are offered by your local NCWorks Career Centers:

- One-on-one assistance
- Career assessments
- Job interview, resume, and cover letter preparation
- Referrals to jobs based on candidate's qualifications
- Information about employer's hiring policies
- Help locating resources to assist with a smooth transition from prison to community
- Access to job fairs and group workshops

To access the online job bank or locate the nearest NCWorks Career Center visit the website: [www.NCWorks.gov](http://www.NCWorks.gov)

## Incentives for Employers Who Hire Former Offenders

The **Federal Bonding Program** provides insurance to employers who hire "at risk" workers, including those with criminal records. The hiring business is eligible for financial protection of \$5,000 for six months after hiring a former offender. Former offenders are eligible for Federal Bonding. The hiring employer must contact an NCWorks Career Center or the State Bonding Coordinator listed below to take advantage of the program. For additional information you may also visit the Federal Bonding website at: [www.bonds4jobs.com](http://www.bonds4jobs.com)

**Work Opportunity Tax Credit (WOTC)** provides tax incentives for employers who hire former offenders and other target groups. The tax credit for each target group varies, but the total for an ex-felon could equal as much as \$2,400. To qualify, the ex-felon has to be hired within one year of either a felony conviction or their release from prison. Contact your local NCWorks Career Center for more information or visit the website:

<http://www.nccommerce.com/workforce/businesses/work-opportunity-tax-credit>

**100-Day No Fault** If you have to terminate a new employee within a 100-day period, your unemployment insurance account will not be charged. Applicable only to employees terminated within a 100-day period from the date of hiring, due to a bona fide inability to do the work. Employers must request non-charging by contacting the Division of Employment Security.

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