

THE SECOND CHANCE ACT

1 in 4 North Carolinians

have criminal records, creating devastating “collateral consequences” that impact housing, employment, and other opportunities.



The Second Chance Act

is a bipartisan clean slate bill that expands expungement eligibility for certain offenses after a waiting period

This bill provides relief by:

- Allowing District Attorneys to file expungement petitions- creating opportunities for mass relief
- Making special provisions for Raise the Age expunctions, expunctions for charges not resulting in convictions, modification of expunction of nonviolent misdemeanor and felony convictions
- Automating some expungements



#IAMFORSECONDCHANCES

ncsecondchance.org

RAISE THE AGE EXPUNCTIONS

- Any Misdemeanor or Class H or I Felony committed before Dec. 1, 2019 by a person between the ages of 16-18 (at the time of the offense) can file a petition for expunction after an active sentence and probation and post release have been completed and there are no outstanding restitution orders. **The forms to file an expungement under these criteria will be made and distributed by Sept. 1, 2020.**
-

EXPUNCTIONS FOR CHARGES NOT RESULTING IN CONVICTION

Felony Conviction no longer blocks these expungements. Effective Dec. 1, 2020.

- If you are charged with a misdemeanor or felony and the court makes a finding of not guilty or not responsible, or if charges are dismissed by the court, you are able to file an expungement petition with the court to remove these charges from your record. A felony conviction no longer blocks these expungements. **Effective Dec. 1, 2020. Have to File Petition with the Court.**
 - Automation (After Dec. 1, 2021): If you are charged with a crime on or after Dec. 1, 2021 and all charges in the case are dismissed, the court makes a finding of not guilty, or not responsible for all charges, the charges will be automatically expunged. ***Plea Agreements: Charges dismissed pursuant to a plea agreement are not automated, but you can file a petition for expungement of charges that are dismissed through a plea agreement.**
-

Modification of Expunction of Nonviolent Misdemeanor and Felony Convictions

If a person is granted an expunction under this section, they are not eligible for any other expunction under this section for offenses committed after the date of the previous expunction. Effective: Dec. 1, 2020 and applies to petitions filed on or after that date.

- You can file for expunction of one nonviolent misdemeanor: **5 years after the date of conviction**, or active sentence, probation or post release has been served; whichever occurs later. You must have no other felony or misdemeanor convictions other than traffic; and no outstanding restitution or civil judgements.
- You can file for expunction of more than one nonviolent misdemeanor: **7 years after the last date of conviction**, or active sentence, probation or post release has been served; whichever occurs later, and have no other convictions that are excluded from expunction eligibility, felony or misdemeanor. You cannot have any other conviction during the 7-year waiting period, and must have no outstanding restitution or civil judgements.
- You can file for expunction of one nonviolent felony conviction: **10 years after the date of conviction**, or active sentence, probation or post release has been served; whichever occurs later. You cannot have any other convictions during the 10-year waiting period and must have no outstanding restitution or civil judgements. No other convictions that are excluded from expunction eligibility.

We Urge You to Support

The Second Chance Act

Senate Bill 562

Primary Sponsors: Senator Danny Britt, Senator Warren Daniel, Senator Floyd McKissick

The Second Chance Act is a bipartisan “clean slate” bill that automatically expunges criminal charges that are dismissed or disposed “not guilty” after July 1, 2020, and allows individuals to petition for expungement of all nonviolent misdemeanor convictions after 7 years of good behavior. The definitions of “nonviolent misdemeanor” and “nonviolent felony” are not changed by this bill. Expunged criminal records are not available to the public, but expunged dismissals and convictions can still be accessed by district attorneys and considered by courts for sentencing if the person re-offends.

WHY WE NEED CLEAN SLATE RELIEF

- Criminal records of all types (even dismissed charges) cause devastating “collateral consequences” for many of **the 1 in 4 adults with criminal records (2+ million North Carolinians)**. People of color are even more likely to face severe barriers to reentry and opportunity.
- People striving to lead prosperous, law-abiding lives face unnecessary, exclusions from jobs, homes, and other opportunities for years after exiting the criminal justice system. **A 2018 study found a 25% increase in wages for people who had records expunged.**
- By allowing people with dismissed charges and old nonviolent convictions to expunge their criminal records and find good employment, **North Carolina will gain tax revenues, reduce the high costs of a revolving-door criminal justice system, and make communities safer.**
- **The risk of recidivism drops sharply over time.** In a 2009 study, it was determined that after 4 years of good behavior a person convicted of a nonviolent misdemeanor is no more likely to commit a crime than an average member of society.

THE SECOND CHANCE ACT ADDRESSES THE “SECOND CHANCE GAP” THROUGH AUTOMATION

The NC General Assembly has passed several laws meant to make expunctions accessible to people with dismissed charges and old nonviolent convictions: **S.L. 2011-278 Expunge Nonviolent Offense by Minor** (McKissick, Daniel), **S.L. 2012-191 Expunge Non-Violent Offense by Adult** (Daughtry), **S.L. 2013-53 Prohibit Expunction Inquiry** (Daniel, Goolsby, Kinnaird), **S. L. 2015-202 Automatic Expunction/Mistaken Identity** (McKissick, Bingham, Daniel), **S.L. 2017-195 Expungement Process Modifications** (Tucker, Bryant, McKissick)

Unfortunately, the General Assembly’s commendable efforts have not resulted in a significant number of people obtaining expunction relief. As in many other states, there is a “second chance gap” between people eligible for relief and people obtaining relief. SB 562 will help close the second chance gap.

Expunctions Granted in NC in FY 2017-2018 By Type

GS 15A-145 Misdemeanor Under Age 18	177
GS 15A-145.2 Drug Conviction Under Age 22	52
GS 15A-145.4 Nonviolent Felony Under Age 18	27
GS 15A-145.5 Nonviolent Offense By Adult	629
GS 15A-146 Dismissed /Not Guilty Charge	10,516
GS 15A-147 Identity Theft/Mistaken Identity	833

On May 8, 2019, SB 562 The Second Chance Act passed the Senate, 44-0.
The NC Conference of District Attorneys supports S562.

HOW THE SECOND CHANCE ACT/SB 562 PROVIDES CLEAN SLATE RELIEF

- **AUTOMATIC RELIEF.** A misdemeanor or felony charge that is dismissed or disposed “not guilty” on or after July 1, 2020, will be automatically expunged. (Exception: a felony charge that is dismissed pursuant to a plea agreement that results in any conviction)
- **PROVIDES EXPUNCTION RELIEF FOR CONVICTIONS OF OFFENSES TREATED AS JUVENILE OFFENSES UNDER RAISE THE AGE.** A person or prosecutor will be able to petition for expunction of all misdemeanor and Class H or I felony convictions that occurred when a person was ages 16 or 17 and prior to Dec. 1, 2019 (the effective date of Raise the Age).
- **PROSECUTOR-INITIATED RELIEF.** A prosecutor may petition for expunction of dismissed charges and charges disposed “not guilty” and “Raise the Age” convictions (see above).
- **EXPANDS ELIGIBILITY TO MULTIPLE NONVIOLENT MISDEMEANOR CONVICTIONS.** Current law provides for expunction of a first-time nonviolent misdemeanor after 5 years of good behavior and a first-time nonviolent felony after 10 years of good behavior. S562 would expand expunction eligibility by allowing an individual to petition for expunction of all nonviolent misdemeanor convictions after an extended “good behavior” wait period of 7 years.
- **PRESERVES AND EXPANDS ALL “SAFETY VALVES” THAT EXIST IN CURRENT LAW.** District Attorneys and victims are provided notice of a petition for expunction and can appear at the hearing. If a person re-offends after having a conviction expunged, the expunged conviction is treated as a prior conviction for all purposes of criminal prosecution and sentencing. A person is disqualified from expunging a nonviolent misdemeanor or felony if the person has ever been convicted of any offense not considered a “nonviolent misdemeanor or felony” under GS 15A-145.5(a).
- **S562 DOES NOT CHANGE THE DEFINITION OF “NONVIOLENT” MISDEMEANOR OR FELONY.** Current expunction laws and S562 disqualify the following convictions, among others, from being expunged under GS 15A-145.5: (i) A Class A through G felony or a Class A1 misdemeanor, (ii) any offense that includes assault as an element of the crime, (iii) any offense requiring registration pursuant to Chapter 14, Article 27A, whether or not the person is currently required to register, (iv) several enumerated sex-related and stalking offenses, (v) any felony offense in Chapter 90 that involves heroin, methamphetamines, or possession with intent to sell cocaine, (vi) felony breaking and entering of any building, motor vehicle, or boat, (vii) crimes committed because of the victim’s race, color, and religion, and (viii) impaired driving offenses.

Supporters Include:



For more information, please contact Tarrah Callahan (Tarrah@SkylineStrategiesLLC.com) or Logan Martin (Logan@SkylineStrategiesLLC.com)

----- Original message -----

From: "Miller, Michael" <Michael.Miller@nccourts.org>

Date: 5/30/19 10:27 AM (GMT-05:00)

To: billywestjr@gmail.com, "Waters, Michael" <Michael.Waters@nccourts.org>, "Freeman, Lorrin" <Lorrin.Freeman@nccourts.org>, "Doyle, Susan I." <Susan.I.Doyle@nccourts.org>, "Lee, Ernest R." <Ernest.R.Lee@nccourts.org>, "O'Neill, James R." <James.R.O'Neill@nccourts.org>, "Thomas, Scott E." <Scott.E.Thomas@nccourts.org>, "Banks, Robert S." <Robert.S.Banks@nccourts.org>, "David, Benjamin R." <Benjamin.R.David@nccourts.org>

Cc: "Dorer, Peg" <Peg.Dorer@nccourts.org>, "Overton, Kimberly N." <Kimberly.N.Overton@nccourts.org>, "Rep. Tim Moore" <Tim.Moore@ncleg.net>, "Rep. Jason Saine" <Jason.Saine@ncleg.net>, "Sen. Ted Alexander" <Ted.Alexander@ncleg.net>, "Shaffer, Richard L." <Richard.L.Shaffer@nccourts.org>, jeff.ledford@cityofshelby.com, alan.norman@clevelandcounty.com, Proctor Lisa <LisaP@CityofKM.com>, Bill Beam <bbeam@lincolnsheriff.org>

Subject: FW: Second Chance Act

ALL:

After reading the below emails and the stats on Bowes' website, I am not sure I want to live in this state. Either the judges in this state are racists, or his stats are grossly misleading. I find it embarrassing that a person who would post the following, would even have a seat at the table, must less be the standard bearer, for expunction expansion.

- * Black people represent 22 percent of North Carolina's total population, but account for 55 percent of the state's prison population.
- * The lifetime chance of being incarcerated for a Black male in the United States is 25 percent, compared to 15 percent for a Hispanic male and less than 5 percent for a White male.
- * Black people and White people use illegal drugs at similar rates, but the imprisonment rate of Black people for possession of illegal drugs is almost 6 times that of White people.
- * A Black person convicted of the same crime as a White person receives, on average, a longer prison sentence.
- * For additional figures see the NAACP Criminal Justice Fact Sheet

*How many people are sentenced to prison for "possession"? Zero. Unless you have a bad record.

*How can a black person be sentenced to prison at a rate 6 times greater than a white person, for the same crime and with the same prior record level?

*How can a black person convicted of the same crime, get a longer sentence than a white person? Probably because he has more prior convictions? But let's not say that, because that is not as inflammatory.

I understand that some of our colleagues will embrace the SCA and I respect their position. They have to do what they personally believe is right and/or what is expedient in their district. I firmly believe that our expunction statutes are sufficiently robust to provide people that truly make a one-time poor decision, an opportunity for a second chance.

My job is to protect the law abiding citizens of my district, not worry about "collateral civil consequences". This is just one more way for groups like this to obviate the need for personal accountability in society. It is not the defendant's fault that he committed a crime and went to prison. It is the systems fault per Bowe's website.

Year after year, groups like this continue to chip away at the concept of personal accountability. We should be standing with the 99% of the population that does not commit a crime. We need to stop allowing the tail to wag the dog. We were elected to represent truth and justice. And yes, justice may include a second chance. But at point, a line must be drawn and I believe we have reach that point.

The changes proposed in this Act are not good for my district, nor for North Carolina. I have no interest in conducting further dialogue with a person/organization that propagates incendiary half-truths.

If my colleagues find my position incompatible with the ongoing work or direction of the Executive Committee, I will gladly and without any ill-will, tender my resignation.

v/r
Mike

Michael W. Miller
District Attorney
Cleveland and Lincoln Counties

704.476.7810 – Shelby
704.742.7810 – Lincoln

District Attorney Ben David's comments on behalf of the NC Conference of District Attorneys
Press Conference, July 10, 2019

Re: The Second Chance Act

"[I am] Ben David, District Attorney for Pender and New Hanover Counties and former President of the Conference of District Attorneys. I rise along with the DAs in big cities and rural communities across our great State in support of the Second Chance Act and urge its passage and the Governor's signature to bring it into law. I want to start by thanking the incredible House and Senate leadership that has made this broad coalition of leaders here today possible. This is not just a left/right coalition, this is democrats and republicans sitting down with prosecutors and defense attorneys, community activists and former offenders, coming together saying this is the right thing for North Carolina. And I am so privileged to be a small part of this great day today.

This is about balancing personal responsibility and accountability on the one hand with mercy and second chances on the other hand. We are guided by the principle that if you do a crime you do the time. But we also know a little bit of something about the power of forgiveness in this state.

This is a common-sense opportunity to give people a second chance and get them back to work without jeopardizing public safety. Its important to note that if one of these individuals reoffends their past will come back to be used against them in a court of law. But, what this act also does, is removes the label that no longer applies to someone who has demonstrated that sometimes over more than a decade, that they have learned from their mistakes. This is, as other speakers have already said, about public safety. It gives people a path forward that have paid their debt to society. You know we talk about inalienable rights and to secure the blessings of liberty and to protect life we have to remember the pursuit of happiness. That means we need to get people into good paying jobs and get them into housing. It means higher education and military service. Those things become pipe dreams for some people with criminal records. Even nonviolent felony convictions on someone's record impacts their future earnings by 40% over a lifetime. If we can remove these scarlet letters its been referred to...isn't that good for everybody? To reunite families...isn't that a good thing? If we can get people to proudly serve in our country instead of being on the street— because the street has always been an equal opportunity employer—isn't that a good thing? Shouldn't we be shutting the revolving door of recidivism...isn't that a good thing?

And so, what we are here today to say is, we are going to continue to do our jobs to continue to keep our communities as safe as possible. But, while we do justice we can't forget about love and mercy also. That's what today is all about, and what I think is very important, and Senator McKissick mentioned this, there are collateral consequences that come, not just from convictions but mere charges. District Attorneys know all about second chances. And we've been engaged in the practice for years of trying to extend those second chances through plea

offers, deferred prosecutions, community service, dismissals after people have completed those things. And yet time and again what we find is that the people, vast majorities of which are eligible for [expunction] relief, are not seeking it because of the costly hurdles and time expense to go through that court process. We are now going to be able to achieve through technology what so many of us working in this room together like Daniel Bowes and Bill Rowe and others have tried to do with opening up expungement clinics in our district. We can now do this with the power of technology. That's going to translate into hundreds of thousands of people getting this relief over the next several years. And that's one of the very best things we can say about today.

And so, in closing I just want to thank again the many leaders that have brought this day forward and made it possible. This is indeed a great day for North Carolina and the prosecutors are going to work as hard as we can to make sure that justice continues to happen. Not just in a courtroom but out in the communities we serve through a second chance like this. Thank you very much."