



NORTH CAROLINA  
ADMINISTRATIVE OFFICE  
*of the* COURTS

## **2016 Expunctions Report**

[DPS and NCAOC Joint Report Pursuant to G.S. § 15A-160]

September 1, 2016





## INTRODUCTION

The Department of Public Safety (DPS), in conjunction with the Department of Justice (DOJ) and the North Carolina Administrative Office of the Courts (NCAOC) are required to report annually to the General Assembly on the number and types of expunctions granted and the use of funds appropriated to support the processing of expunctions. Specifically, N.C.G.S. 15A-160, provides as follows:

### **§ 15A-160. Reporting requirement.**

The Department of Public Safety, in conjunction with the Department of Justice and the Administrative Office of the Courts, shall report jointly to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety Oversight by September 1 of each year regarding expunctions. The report shall include all of the following information:

- (1) The number and types of expunctions granted during the fiscal year in which the report is made.
- (2) The number and type of expunctions granted each fiscal year for the five fiscal years preceding the date of the report.
- (3) A full accounting of how the agencies have spent the receipts generated by the expunction fees received during the fiscal year in which the report is made and for the five preceding fiscal years."

After the SBI was transferred to DPS, the DOJ distribution was transferred to DPS as well. Therefore, this report represents a joint effort by DPS and NCAOC to meet the statutory requirement.

## ANALYSIS

### *A Brief Overview of the Expunction Process*

A person seeking an expunction typically must file a petition for expunction under the relevant statute. As custodian of the record, the clerk receives petitions for filing, collects any necessary fees, schedules the petitions for hearing when required, and then files and carries out any order entered by the court.

Certain expunction provisions require a criminal record check and a search by the NCAOC of the confidential index of prior expunctions prior to a hearing on the petition. When a petition must be sent to the State Bureau of Investigation ("SBI") and NCAOC for such searches, a judge initiates the process by signing a request for the record searches. After a judge has signed the request, the petition is sent first to the SBI for the criminal record check, and the SBI then sends the petition to NCAOC for a search of the confidential index of prior expunctions.

Almost all expunctions require a hearing before the court. For expunction petitions sent to the SBI and NCAOC for record checks, the clerk does not schedule the hearing until the petition has been returned by the NCAOC and the petitioner requests a hearing. For expunctions that do not require record checks, the clerk schedules the hearing upon filing of the petition and collection of any required fees.

When a petition for expunction is granted, the clerk must expunge all record of the case from the court's records, including both paper and electronic records. This requires NCAOC to delete all images stored electronically and on microfilm, both in the court databases and at State



Archives. The clerk also must notify State and local agencies of the expunction by certified copy of the order, and provide a certified copy of the order to the NCAOC.

### Number and Type of Expunctions

For FY 2015-16, North Carolina state courts issued 11,032 expunction orders. The attached Table 1 details the number of expunctions for FY 2015-16 and the preceding five fiscal years, categorized by the statute under which the expunction was granted.

### Receipts Generated from Expunction Fees

Section 18B.16 of S.L 2013-360 amended the expunction statutes (G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, and 15A-146) to impose a \$175.00 fee on persons who file a petition for expunction of a criminal record on or after September 1, 2013.<sup>1</sup> The \$175.00 fee is deposited in the General Fund, with \$122.50 of the fee remitted to DPS for the costs of criminal record checks performed in connection with processing petitions for expunctions and \$52.50 retained by NCAOC to pay the costs of processing petitions for expunctions. The section authorized DOJ to use up to \$1.4 million to create and support up to five new staff positions to help process petitions for expunction and conduct criminal record checks required for those petitions. Again, after the SBI was transferred to DPS, the DOJ distribution was transferred to DPS as well.

From July 1, 2015 through June 30, 2016, NCAOC collected and disbursed a total of \$544,095 from expunction fees applied toward the General Fund. Of that amount, NCAOC retained \$163,310, remitted \$380,785 to DPS pursuant to G.S. 7A-321(d).

Of the funds remitted to DPS during FY 2015-16, DPS spent \$157,598 on expunction payroll and administrative support expenses. In addition, \$128,214 were reverted to the general fund leaving a cash balance of \$90,331 as of June 30, 2016 which was the approved legislative carryforward. Prior to FY 2015-16, the SBI filled two of the five receipt-supported positions authorized in Section 18B.16 of S.L 2013-360. The three remaining receipt-supported positions are currently in the hiring process.

Of the funds remitted to NCAOC during FY 2015-16, NCAOC spent \$137,271 on expunction payroll and administrative support expenses. Pursuant to G.S. 143C-1-2(b), the remaining balance of \$25,509 was approved as a legislative carryforward to FY 2016-17.

## **SUMMARY**

NCAOC, the SBI and DPS will continue to take appropriate steps to expedite the processing of expunctions. Both NCAOC and DPS anticipate maximizing the use of future funds to expedite the processing of expunctions.

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<sup>1</sup> G.S. 15A-146 imposes the fee only for offenses dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge.

**Table 1: Expunction Orders for Fiscal Years 2010-2016**

<b>Statute</b>	<b>2010-11</b>	<b>2011-12</b>	<b>2012-13</b>	<b>2013-14</b>	<b>2014-15</b>	<b>2015-16</b>	<b>Total</b>
7B-3200	1	3	0	2	2	0	8
15A-145	97	6	17	8	7	2	137
15A-145(A)	77	144	146	175	128	145	815
15A-145(D1)	14	15	16	7	0	0	52
15A-145.1	0	1	1	1	0	0	3
15A-145.2	0	0	0	8	4	4	16
15A-145.2(A)	23	23	34	47	33	32	192
15A-145.2(B)	7	13	14	22	11	27	94
15A-145.2(C)	32	26	30	42	22	37	189
15A-145.3	0	0	0	1	2	1	4
15A-145.3(A)	0	0	0	3	1	1	5
15A-145.3(B)	7	6	7	4	5	12	41
15A-145.3(C)	1	1	0	1	2	2	7
15A-145.4	0	4	15	21	13	16	69
15A-145.5	0	0	6	311	292	411	1,020
15A-145.6	0	0	0	0	1	1	2
15A-146	11,414	8,990	10,006	12,886	7,407	9,929	60,632
15A-147	52	69	66	60	42	412	701
15A-149	0	0	0	2	0	0	2
90-96(B)	2	0	1	1	0	0	4
90-96(D)	0	0	0	1	0	0	1
90-96(E)	2	0	0	0	0	0	2
90-113.14(E)	0	0	0	0	0	0	0
<b>Total</b>	<b>11,729</b>	<b>9,301</b>	<b>10,359</b>	<b>13,603</b>	<b>7,972</b>	<b>11,032</b>	<b>63,996</b>

NOTE: Session Law 2009-577 consolidated all criminal expunction statutes under Article 5 of Chapter 15A by recodifying expunction provisions from other chapters of the General Statutes, including Chapter 90. The expunction counts included in this table under Chapter 90 provisions predate that change or perhaps misstate the applicable statutory section.