

Conviction of Controlled Substance, Drug Paraphernalia, and Toxic Vapor Offenses

This last type of drug-related expunction applies to convictions (see Table 14 [1] and Table 15 [2]). The expunction procedures for offenses in G.S. 90-96(e) and G.S. 15A-145.2(c), which cover controlled substances and drug paraphernalia, and G.S. 90-113.14(e) and G.S. 15A-145.3(c), which cover toxic vapor offenses, are discussed together because the requirements are similar. Differences are reflected in the accompanying tables.

The 2009 Consolidation Act, S.L. 2009-577 [3], did not make any new matters in this category subject to expunction; instead, it moved the key expunction provisions from G.S. Chapter 90 to new G.S. 15A-145.2(c) and G.S. 15A-145.3(c). In transferring the language, however, the legislation made one potentially important change. The change is the same in both of the new statutes; for ease of discussion, G.S. 15A-145.2(c) is used to explain the impact of the change. Former G.S. 90-96(e) stated that a person could obtain one expunction under "this section." The term "section" is generally construed to refer to the statute number, in this instance G.S. 90-96. New G.S. 15A-145.2(c) states that a person may obtain one expunction under "this subsection." The term "subsection" is generally construed to refer to the lettered provision of a statute, in this instance G.S. 15A-145.2(c). The change potentially has two effects. One, an expunction under other subsections of G.S. 15A-145.2 may not preclude an expunction under G.S. 15A-145.2(c).[1] Two, a prior expunction under G.S. 90-96(e) is not listed as a bar to an expunction under G.S. 15A-145.2(c).

The 2011 JRA, S.L. 2011-192 [4], modified the criteria for expunction of controlled substance and drug paraphernalia convictions. (It did not modify the toxic vapor expunction provisions.) On the one hand, it broadened eligibility by expanding the offenses subject to expunction. Under the revised statutes, a person may obtain an expunction of any felony controlled substance possession conviction, not just a conviction of felony possession of less than one gram of cocaine, as well as an expunction of misdemeanor possession of controlled substance and misdemeanor drug paraphernalia convictions. On the other hand, the 2011 JRA narrowed eligibility by expanding the prior offenses that bar an expunction, shown in Table 14. The changes apply to pleas and findings of guilt on or after January 1, 2012. If a person was convicted of an offense before that date, he or she is subject to the previous criteria for an expunction, also shown in Table 14.

In revising the list of disqualifying convictions for expunctions of controlled substance and drug paraphernalia convictions, the 2011 JRA did not fully address inconsistent language about the significance of prior convictions. G.S. 15A-145.2(c) states, toward the end of that subsection, that the petitioner must not have been convicted of *any* felony or misdemeanor other than a traffic violation. The applicable AOC form, AOC-CR-266, includes this language as a condition for expunction. The language is difficult to reconcile, however, with the opening language of G.S. 15A-145.2(c), which lists the specific prior offenses that bar an expunction. The corresponding provisions of G.S. 90-96(e) include the same list of disqualifying convictions and contain no language requiring that the person be entirely conviction-free. Other changes made by the 2011 JRA suggest that the General Assembly may not have intended to require that the petitioner be entirely conviction-free. In addition to modifying the list of disqualifying convictions at the beginning of G.S. 15A-145.2(c), the 2011 JRA inserted language later in the subsection stating that if the court determines, among other things, "that the petitioner has no disqualifying previous convictions as set forth in this subsection . . .," it must enter an order of expunction. The ambiguity arises from the General Assembly's failure to delete the language, several lines later, stating that the court must find that the person has no prior felony or misdemeanor convictions other than for a traffic violation. This guide takes the view that the specific provisions on disqualifying convictions better reflect the General Assembly's intent. *See supra* Types of Expunctions and Their Requirements, note 1 [5] (discussing how courts may interpret conflicting language in statutes). The dangling general language about prior convictions remains a part of G.S. 15A-145.2(c), however, and could be viewed by the courts as binding unless explicitly repealed.[2]

G.S. 15A-145.3(c) on expunction of toxic vapor convictions, although not modified by the 2011 JRA, contains a similar inconsistency. It enumerates the disqualifying prior convictions at the beginning of the subsection but also states toward the end that a person may not have any prior convictions. The corresponding provisions of G.S. 90-113.14(e) include the same list of specific disqualifying convictions and no language requiring that the person be entirely conviction-free.

For both types of expunctions, the person must have been 21 years of age or younger when he or she committed the offense in question.[3]

Table 14. Conviction of Controlled Substance and Drug Paraphernalia Offenses

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Conviction <i>on or after</i> Jan. 1, 2012, of <ul style="list-style-type: none"> ◦ misdemeanor possession of a controlled substance within 	<ul style="list-style-type: none"> • No prior conviction for^a <ul style="list-style-type: none"> ◦ felony, ◦ offense under G.S. Ch. 90, or ◦ offense under any federal or state statute for controlled 	<ul style="list-style-type: none"> • G.S. 15A-145.2(c) [6] and G.S. 90-96(e) [7] • AOC-CR-266 [8] (Jan. 2012), AOC-CR-266I [9] (Jan. 2012)

<p>Schedules I through VI of Article 5 of G.S. Ch. 90,</p> <ul style="list-style-type: none"> o felony under G.S. 90-95(a)(3), or o possession of drug paraphernalia under G.S. 90-113.22 	<p>substance in any schedule in G.S. Ch. 90 or paraphernalia in Art. 5B of G.S. Ch. 90</p> <ul style="list-style-type: none"> • No prior expunction under G.S. 15A-145.2(c) • Petition may not be filed for at least 12 months after conviction • Completion of drug education program unless waived by court • Good behavior since conviction • Commission of offense when age 21 or younger 	<p>(instructions)</p>
<ul style="list-style-type: none"> • Conviction <i>before</i> Jan. 1, 2012, of <ul style="list-style-type: none"> o misdemeanor o possession of a controlled substance in Schedules II through VI of G.S. Ch. 90, Art. 5, o felony possession of less than one gram of cocaine under G.S. 90-95(a)(3), or o possession of drug paraphernalia under G.S. 90-113.22 	<ul style="list-style-type: none"> • No prior conviction for^b <ul style="list-style-type: none"> o offense under Article 5 of G.S. Ch. 90, or o offense under any federal or state statute for controlled substance in any schedule in Art. 5 or paraphernalia in Art. 5B of G.S. Ch. 90 • No prior expunction under G.S. 15A-145.2(c) • Petition may not be filed for at least 12 months after conviction • Completion of drug education program unless waived by court • Good behavior since conviction • Commission of offense when age 21 or younger 	<ul style="list-style-type: none"> • G.S. 15A-145.2(c) [6] and G.S. 90-96(e) [7] (for prior version of these statutes, see S.L. 2011-192 [4]) • AOC-CR-266 [8] (Jan. 2012), AOC-CR-266I [9] (Jan. 2012) (instructions)
<p>^a See discussion in text about whether the petitioner must be entirely conviction-free.</p> <p>^b See note <i>a</i>.</p>		

Table 15. Conviction of Toxic Vapor Offenses

Matters Subject to Expunction	Principal Restrictions on Expunction	Applicable Statutes and Forms
<ul style="list-style-type: none"> • Conviction of misdemeanor under G.S. Ch. 90, Art. 5A (toxic vapors) 	<ul style="list-style-type: none"> • No prior conviction for^a <ul style="list-style-type: none"> o offense under Art. 5 or 5A of G.S. Ch. 90, or o offense under any federal or state statute for substances in Article 5 or paraphernalia in Art. 5B of G.S. Ch. 90 • No prior expunction under G.S. 15A-145.3(c) • Petition may not be filed for at least 12 months after conviction • Completion of drug education 	<ul style="list-style-type: none"> • G.S. 15A-145.3(c) [10] and G.S. 90-113.14(e) [11] • AOC-CR-268 [12] (Jan. 2012), AOC-CR-268I [13] (Jan. 2012) (instructions)

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| | program unless waived by court <ul style="list-style-type: none"> ● Good behavior since conviction ● Commission of offense when 21 or younger | |
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^a See discussion in text about whether the petitioner must be entirely conviction-free.

[1] However, an expunction under any subsection of G.S. 15A-145.2 would bar an expunction of a dismissal under G.S. 15A-146 because the latter statute explicitly says so. See *supra* Expunction of Dismissals and Similar Dispositions: Dismissal or Finding of Not Guilty of Misdemeanors, Felonies, and Certain Infractions [14].

[2] The 2011 JRA also created an inconsistency in the list of disqualifying convictions. Revised G.S. 15A-145.2(c) states that a person may not have a conviction under G.S. Chapter 90, while G.S. 90-96(e) continues to state that a person may not have a conviction under “this Article,” meaning Article 5 of G.S. Chapter 90. This guide opts for the former language, which has the effect of making a conviction of any offense under Chapter 90 (such as a toxic vapor offense) a bar to an expunction, because the General Assembly affirmatively added the language.

[3] See *In re Spencer*, 140 N.C. App. 776 (2000) (interpreting language in G.S. 90-96(e) (now a part of G.S. 15A-145.2(c)) as imposing this requirement). Because it is so similar, G.S. 90-113.14(e) (now a part of G.S. 15A-145.3(c)) likely would be interpreted as imposing the same age requirement.

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Links:

- [1] <http://www.sog.unc.edu/node/2687#table14>
- [2] <http://www.sog.unc.edu/node/2687#table15>
- [3] <http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2009-2010/SL2009-577.pdf>
- [4] <http://www.ncleg.net/EnactedLegislation/SessionLaws/PDF/2011-2012/SL2011-192.pdf>
- [5] http://www.sog.unc.edu/node/2643#_ftnref1
- [6] <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=15A-145.2>
- [7] <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=90-96>
- [8] <http://www.nccourts.org/Forms/Documents/1209.pdf>
- [9] <http://www.nccourts.org/Forms/Documents/1066.pdf>
- [10] <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=15A-145.3>
- [11] <http://www.ncleg.net/gascripts/statutes/statutelookup.pl?statute=90-113.14>
- [12] <http://www.nccourts.org/Forms/Documents/1173.pdf>
- [13] <http://www.nccourts.org/Forms/Documents/1205.pdf>
- [14] <http://www.sog.unc.edu/./node/2686>