

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2019

H.B. 284  
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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH10116-MLf-12

Short Title: Expunction Law Revisions.

(Public)

Sponsors: Representatives Alexander, Hunter, Harrison, and Logan (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED  
2 AN ACT TO MODIFY THE AMOUNT OF TIME A PERSON MUST WAIT BEFORE FILING  
3 A PETITION FOR EXPUNCTION OF A NONVIOLENT MISDEMEANOR OR FELONY,  
4 AND TO ALLOW THE EXPUNCTION OF A VIOLENT MISDEMEANOR OR FELONY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 15A-145.5 reads as rewritten:

7 "§ 15A-145.5. Expunction of ~~certain~~ misdemeanors and felonies; no age limitation.

8 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent  
9 felony" means any misdemeanor or felony except the following:

- 10 (1) A Class A through G felony or a Class A1 misdemeanor.
- 11 (2) An offense that includes assault as an essential element of the offense.
- 12 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the  
13 General Statutes, whether or not the person is currently required to register.
- 14 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),  
15 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,  
16 14-277.3, 14-277.3A, 14-321.1.
- 17 (5) Any felony offense in Chapter 90 of the General Statutes where the offense  
18 involves methamphetamines, heroin, or possession with intent to sell or  
19 deliver or sell and deliver cocaine.
- 20 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for  
21 which punishment was determined pursuant to G.S. 14-3(c).
- 22 (7) An offense under G.S. 14-401.16.
- 23 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
- 24 (8) Any felony offense in which a commercial motor vehicle was used in the  
25 commission of the offense.
- 26 (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
- 27 (9) Any offense that is an attempt to commit an offense described in subdivisions  
28 (1) through (8a) of this subsection.

29 (a1) For purposes of this section, the terms "violent felony" and "violent misdemeanor"  
30 mean any misdemeanor or felony not covered under subsection (a) of this section.

31 (b) Notwithstanding any other provision of law, if the person is convicted of more than  
32 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the  
33 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person  
34 had already been served with criminal process for the commission of a nonviolent felony or  
35 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor  
36 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction



1 under this section, and the expunction order issued under this section shall provide that the  
2 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be  
3 expunged from the person's record in accordance with this section.

4 (b1) Notwithstanding any other provision of law, if the person is convicted of more than  
5 one violent felony or violent misdemeanor in the same session of court and none of the violent  
6 felonies or violent misdemeanors are alleged to have occurred after the person had already been  
7 served with criminal process for the commission of a violent felony or violent misdemeanor, then  
8 the multiple violent felony or violent misdemeanor convictions shall be treated as one violent  
9 felony or violent misdemeanor conviction under this section, and the expunction order issued  
10 under this section shall provide that the multiple violent felony convictions or violent  
11 misdemeanor convictions shall be expunged from the person's record in accordance with this  
12 section.

13 (b2) Notwithstanding any other provision of law, if the person is convicted of one or more  
14 violent and nonviolent felonies or misdemeanors in the same session of court, then the violent  
15 felonies or misdemeanors shall be treated as one violent felony or violent misdemeanor  
16 conviction under this section, and the nonviolent felonies or misdemeanors shall be treated as  
17 one nonviolent felony or nonviolent misdemeanor conviction under this section. The expunction  
18 order issued under this section shall provide that the felony or misdemeanor convictions shall be  
19 expunged from the person's record in accordance with this section.

20 (c) A person may file a petition, in the court of the county where the person was  
21 convicted, for expunction of a ~~nonviolent~~ misdemeanor or ~~nonviolent~~ felony conviction from the  
22 person's criminal record if the person has no other misdemeanor or felony convictions, other than  
23 a traffic violation. ~~The~~ For expunction of a nonviolent misdemeanor or nonviolent felony  
24 conviction, the petition shall not be filed earlier than 40-(i) five years after the date of the  
25 conviction for a nonviolent felony or five years for a nonviolent misdemeanor or (ii) when any  
26 active sentence, period of probation, and post-release supervision has been served, whichever  
27 occurs later. For expunction of a violent misdemeanor or violent felony conviction, the petition  
28 shall not be filed earlier than (i) eight years after the date of the conviction for a violent felony  
29 or violent misdemeanor or (ii) when any active sentence, period of probation, and post-release  
30 supervision has been served, whichever occurs later. The petition shall contain, but not be limited  
31 to, the following:

- 32 (1) An affidavit by the petitioner that the petitioner has been of good moral  
33 character since the date of conviction for the ~~nonviolent~~ misdemeanor or  
34 ~~nonviolent~~ felony and has not been convicted of any other felony or  
35 misdemeanor, other than a traffic violation, under the laws of the United States  
36 or the laws of this State or any other state.
- 37 (2) Verified affidavits of two persons who are not related to the petitioner or to  
38 each other by blood or marriage, that they know the character and reputation  
39 of the petitioner in the community in which the petitioner lives and that the  
40 petitioner's character and reputation are good.
- 41 (3) A statement that the petition is a motion in the cause in the case wherein the  
42 petitioner was convicted.
- 43 (4) An application on a form approved by the Administrative Office of the Courts  
44 requesting and authorizing a name-based State and national criminal history  
45 record check by the Department of Public Safety using any information  
46 required by the Administrative Office of the Courts to identify the individual,  
47 a search by the Department of Public Safety for any outstanding warrants on  
48 pending criminal cases, and a search of the confidential record of expunctions  
49 maintained by the Administrative Office of the Courts. The application shall  
50 be filed with the clerk of superior court. The clerk of superior court shall  
51 forward the application to the Department of Public Safety and to the

1 Administrative Office of the Courts, which shall conduct the searches and  
2 report their findings to the court.

- 3 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
4 representing amounts ordered for restitution entered against the petitioner are  
5 outstanding.

6 Upon filing of the petition, the petition shall be served upon the district attorney of the court  
7 wherein the case was tried resulting in conviction. The district attorney shall have 30 days  
8 thereafter in which to file any objection thereto and shall be duly notified as to the date of the  
9 hearing of the petition. Upon good cause shown, the court may grant the district attorney an  
10 additional 30 days to file objection to the petition. The district attorney shall make his or her best  
11 efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the  
12 date of the hearing.

13 The presiding judge is authorized to call upon a probation officer for any additional  
14 investigation or verification of the petitioner's conduct since the conviction. The court shall  
15 review any other information the court deems relevant, including, but not limited to, affidavits  
16 or other testimony provided by law enforcement officers, district attorneys, and victims of crimes  
17 committed by the petitioner.

18 If the court, after hearing, finds that the petitioner has not previously been granted an  
19 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or ~~15A-145.4;~~  
20 ~~the petitioner has remained of good moral character; the petitioner has no outstanding warrants~~  
21 ~~or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other~~  
22 ~~than a traffic violation; the petitioner has no outstanding restitution orders or civil judgments~~  
23 ~~representing amounts ordered for restitution entered against the petitioner; and the petitioner was~~  
24 ~~convicted of an offense eligible for expunction under this section and was convicted of, and~~  
25 ~~completed any sentence received for, a nonviolent felony at least 10 years prior to the filing of~~  
26 ~~the petition or a nonviolent misdemeanor at least five years prior to the filing of the petition,~~  
27 15A-145.4, and the petitioner has otherwise met the applicable requirements of this section, it  
28 may order that such person be restored, in the contemplation of the law, to the status the person  
29 occupied before such arrest or indictment or information, except as provided in G.S. 15A-151.5.  
30 If the court denies the petition, the order shall include a finding as to the reason for the denial.

31 (d) No person as to whom an order has been entered pursuant to subsection (c) of this  
32 section shall be held thereafter under any provision of any law to be guilty of perjury or otherwise  
33 giving a false statement by reason of that person's failure to recite or acknowledge the arrest,  
34 indictment, information, trial, or conviction. This subsection shall not apply to a sentencing  
35 hearing when the person has been convicted of a subsequent criminal offense.

36 (d1) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or  
37 17E of the General Statutes, however, shall disclose any and all convictions to the certifying  
38 Commission, regardless of whether or not the convictions were expunged pursuant to the  
39 provisions of this section.

40 Persons required by State law to obtain a criminal history record check on a prospective  
41 employee shall not be deemed to have knowledge of any convictions expunged under this section.

42 (e) The court shall also order that the conviction be expunged from the records of the  
43 court and direct all law enforcement agencies bearing record of the same to expunge their records  
44 of the conviction. The clerk shall notify State and local agencies of the court's order, as provided  
45 in G.S. 15A-150.

46 (f) Any other applicable State or local government agency shall expunge from its records  
47 entries made as a result of the conviction ordered expunged under this section upon receipt from  
48 the petitioner of an order entered pursuant to this section. The agency shall also vacate any  
49 administrative actions taken against a person whose record is expunged under this section as a  
50 result of the charges or convictions expunged. A person whose administrative action has been  
51 vacated by an occupational licensing board pursuant to an expunction under this section may

1 then reapply for licensure and must satisfy the board's then current education and preliminary  
2 licensing requirements in order to obtain licensure. This subsection shall not apply to the  
3 Department of Justice for DNA records and samples stored in the State DNA Database and the  
4 State DNA Databank.

5 (g) A person who files a petition for expunction of a criminal record under this section  
6 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the  
7 time the petition is filed. Fees collected under this subsection shall be deposited in the General  
8 Fund. This subsection does not apply to petitions filed by an indigent."

9 **SECTION 2.** G.S. 15A-151.5(a)(6) reads as rewritten:

10 "(6) G.S. 15A-145.5. Expunction of ~~certain~~ misdemeanors and felonies; no age  
11 limitation."

12 **SECTION 3.** This act becomes effective December 1, 2019, and applies to petitions  
13 filed on or after that date.