

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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SENATE BILL 301
Judiciary Committee Substitute Adopted 3/23/21
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Short Title: Expand Expunction Eligibility.

(Public)

Sponsors:

Referred to:

March 16, 2021

A BILL TO BE ENTITLED

AN ACT TO ALLOW FOR THE EXPUNCTION OF UP TO TWO NONVIOLENT FELONIES, TO EXPAND THE DEFINITION FOR THE TERM "NONVIOLENT FELONY," AND TO ALLOW THE PUBLIC DEFENDER OR PRIVATE COUNSEL TO FILE A PETITION FOR EXPUNCTION ON BEHALF OF A PERSON ELIGIBLE TO EXPUNGE CERTAIN OFFENSES COMMITTED UNDER THE AGE OF EIGHTEEN.

The General Assembly of North Carolina enacts:

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

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

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

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

(a1) An offense involving impaired driving as defined in G.S. 20-4.01(24a) is not eligible for expunction.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court, then the multiple



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

6 (c) A person may file a petition, in the court of the county where the person was
7 convicted, for expunction of one or more nonviolent misdemeanor convictions or ~~one~~ up to two
8 nonviolent felony ~~conviction-convictions~~ from the person's criminal record. The petition shall
9 not be filed earlier than one of the following:

- 10 (1) For expunction of one nonviolent misdemeanor, five years after the date of
11 the conviction or when any active sentence, period of probation, or
12 post-release supervision has been served, whichever occurs later.
- 13 (2) For expunction of more than one nonviolent misdemeanor, seven years after
14 the date of the person's last conviction, other than a traffic offense not listed
15 in the petition for expunction, or seven years after any active sentence, period
16 of probation, or post-release supervision has been served, whichever occurs
17 later.
- 18 (3) For expunction of one nonviolent felony, 10 years after the date of the
19 conviction or 10 years after any active sentence, period of probation, or
20 post-release ~~supervision-supervision~~, related to the conviction listed in the
21 petition, has been served, whichever occurs later.
- 22 (4) For expunction of two nonviolent felonies, 20 years after the date of the most
23 recent conviction listed in the petition, or 20 years after any active sentence,
24 period of probation, or post-release supervision, related to a conviction listed
25 in the petition, has been served, whichever occurs later.

26 A person previously granted an expunction under this section is not eligible for relief under
27 this section for any offense committed after the date of the previous order for expunction.

28 (c1) A petition filed pursuant to this section shall contain, but not be limited to, the
29 following:

- 30 (1) An affidavit by the petitioner that the petitioner is of good moral character and
31 has not been convicted of any other felony or misdemeanor, other than a traffic
32 violation, under the laws of the United States or the laws of this State or any
33 other state during the applicable five-year, seven-year, ~~or 10-year~~ 10-year, or
34 20-year waiting period set forth in subsection (c) of this section.

35 ...

36 (c3) The court, after hearing a petition for expunction of one ~~or up to two nonviolent~~
37 ~~felony, felonies~~, may order that the petitioner be restored, in the contemplation of the law, to the
38 status the petitioner occupied before the arrest or indictment or information, except as provided
39 in G.S. 15A-151.5, if the court finds all of the following:

- 40 (1) The petitioner has not been granted an expunction under this section prior to
41 the date of any offense the current petition requests be expunged.
- 42 (2) The petitioner is of good moral character.
- 43 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 44 (4) The petitioner has no misdemeanor convictions, other than a traffic violation
45 not listed in the petition for expunction, in the five years preceding the
46 petition, and no other felony or misdemeanor convictions, other than a traffic
47 violation not listed in the petition for expunction, convictions not listed in the
48 petition during the applicable 10-year or 20-year waiting period set forth in
49 subsection (c) of this section.
- 50 (4a) For a petition for expunction of two nonviolent felonies, the two nonviolent
51 felony convictions were obtained within the same 24-month period.

- 1 (5) The petitioner has no outstanding restitution orders or civil judgments
2 representing amounts ordered for restitution entered against the petitioner.
3 (6) The petitioner has no convictions for a misdemeanor that is listed as an
4 exception to the term "nonviolent misdemeanor" as provided in subsection (a)
5 of this section or any other felony offense.
6 (7) The petitioner was convicted of an offense eligible for expunction under this
7 section.
8 (8) The petitioner has completed the applicable 10-year or 20-year waiting period
9 set forth in subsection (c) of this section.

10 If the court denies the petition, the order shall include a finding as to the reason for the denial.
11"

12 **SECTION 2.** G.S. 15A-145.8A(a) reads as rewritten:

13 "(a) ~~A person or person, the district attorney-attorney, or an attorney at the request of a~~
14 person eligible for expunction under this section, may file, in the court of the county where the
15 person was convicted, a petition for expunction from the person's criminal record of any
16 misdemeanor or Class H or I felony not excluded by subsection (b) of this section if the offense
17 was committed prior to December 1, 2019, and while the person was less than 18 years of age,
18 but at least 16 years of age. The petition shall not be filed until (i) any active sentence, period of
19 probation, and post-release supervision ordered for the offense has been served and (ii) the person
20 has no restitution orders for the offense or outstanding civil judgments representing amounts
21 ordered for restitution for the offense."

22 **SECTION 3.** This act becomes effective December 1, 2021, and applies to petitions
23 filed on or after that date.