

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

1

SENATE BILL 362

Short Title: Amend Certain Expunction Laws. (Public)

Sponsors: Senators Hartsell (Primary Sponsor); J. Jackson, B. Jackson, and Waddell.

Referred to: Rules and Operations of the Senate.

March 24, 2015

A BILL TO BE ENTITLED

AN ACT TO SHORTEN THE WAITING PERIOD REQUIRED TO EXPUNGE
NONVIOLENT MISDEMEANOR AND FELONY CONVICTIONS; TO PROVIDE FOR
EXPUNCTION OF ALL CHARGES DISPOSED "NOT GUILTY" OR DISMISSED;
AND TO ALLOW DISTRICT ATTORNEYS AND LAW ENFORCEMENT ACCESS TO
FILES EXPUNGED PURSUANT TO SECOND OR SUBSEQUENT PETITIONS AS
PROVIDED BY STATE LAW.

The General Assembly of North Carolina enacts:

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

"(c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic violation.

~~The~~A petition for expunction of a nonviolent felony shall not be filed earlier than ~~15 years~~
(i) 10 years after the date of the conviction or ~~when~~ (ii) the completion of any active sentence,
period of probation, and post-release supervision has been served, whichever occurs later.

A petition for expunction of a nonviolent misdemeanor shall not be filed earlier than (i) five years after the date of conviction or (ii) the completion of any active sentence, period of probation, and post-release supervision has been served, whichever occurs later.

The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any



1 outstanding warrants on pending criminal cases, and a search of the
2 confidential record of expunctions maintained by the Administrative Office
3 of the Courts. The application shall be forwarded to the Department of
4 Public Safety and to the Administrative Office of the Courts, which shall
5 conduct the searches and report their findings to the court.

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

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

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

21 ~~If the court, after hearing, finds that~~ The court may order that the person be restored in the
22 contemplation of the law to the status the person occupied before such arrest or indictment or
23 information if the court finds all of the following: the petitioner has not previously been granted
24 an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
25 15A-145.4; the petitioner has remained of good moral character; the petitioner has no
26 outstanding warrants or pending criminal cases; the petitioner has no other felony or
27 misdemeanor convictions other than a traffic violation; the petitioner has no outstanding
28 restitution orders or civil judgments representing amounts ordered for restitution entered
29 against the petitioner; ~~and~~ the petitioner was convicted of an offense eligible for expunction
30 under this section ~~and was convicted of, and completed any sentence received for, the~~
31 ~~nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition,~~
32 ~~it may order that such person be restored, in the contemplation of the law, to the status the~~
33 ~~person occupied before such arrest or indictment or information.~~ section; and if convicted of a
34 nonviolent felony, the petition was not filed any earlier than 10 years after the date of
35 conviction or the completion of any active sentence, period of probation, and post-release
36 supervision, whichever occurs later, or if convicted of a nonviolent misdemeanor, the petition
37 was not filed any earlier than five years after the date of conviction or the completion of any
38 active sentence, period of probation, and post-release supervision, whichever occurs later. If the
39 court denies the petition, the order shall include a finding as to the reason for the denial."

40 **SECTION 2.** G.S. 15A-146 reads as rewritten:

41 "**§ 15A-146. Expunction of records when charges are dismissed or there are findings of**
42 **not guilty.**

43 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
44 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
45 dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the
46 court of the county where the charge was brought for an order to expunge from all official
47 records any entries relating to his apprehension or trial. The court shall hold a hearing on the
48 application and, upon finding ~~that the person had not previously received an expungement~~
49 ~~under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or~~
50 ~~15A-145.5, and~~ that the person had not previously been convicted of any felony under the laws
51 of the United States, this State, or any other state, the court shall order the expunction. No

1 person as to whom such an order has been entered shall be held thereafter under any provision
2 of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or
3 response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge
4 any expunged entries concerning apprehension or trial.

5 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
6 offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,
7 then a person may apply to have each of those charges expunged if the offenses occurred within
8 the same 12-month period of time or if the charges are dismissed or findings are made at the
9 same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court"
10 shall mean one week for superior court and one day for district court. There is no requirement
11 that the multiple offenses arise out of the same transaction or occurrence or that the multiple
12 offenses were consolidated for judgment. The court shall hold a hearing on the application. If
13 the court finds ~~(i) that the person had not previously received an expungement under this~~
14 ~~subsection, or that any previous expungement received under this subsection occurred prior to~~
15 ~~October 1, 2005 and was for an offense that occurred within the same 12 month period of time,~~
16 ~~or was dismissed or findings made at the same term of court, as the offenses that are the subject~~
17 ~~of the current application, (ii) that the person had not previously received an expungement~~
18 ~~under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii)~~
19 that the person had not previously been convicted of any felony under the laws of the United
20 States, this State, or any other state, the court shall order the expunction. No person as to whom
21 such an order has been entered shall be held thereafter under any provision of any law to be
22 guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry
23 made for any purpose, by reason of his failure to recite or acknowledge any expunged entries
24 concerning apprehension or trial.

25 ...

26 (d) A person charged with a crime that is dismissed pursuant to compliance with a
27 deferred prosecution agreement or the terms of a conditional discharge and who files a petition
28 for expunction of a criminal record under this ~~section~~section, or a person who files a petition
29 for a second or subsequent expungement under this section, must pay the clerk of superior court
30 a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees
31 collected under this subsection are payable to the Administrative Office of the Courts. The
32 clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of
33 each fee to the North Carolina Department of Public Safety for the costs of criminal record
34 checks performed in connection with processing petitions for expunctions under this section.
35 The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the
36 Administrative Office of the Courts and used to pay the costs of processing petitions for
37 expunctions under this section. This subsection does not apply to petitions filed by an
38 indigent."

39 **SECTION 3.** G.S. 15A-151 reads as rewritten:

40 **"§ 15A-151. Confidential agency files; exceptions to expunction.**

41 (a) The Administrative Office of the Courts shall maintain a confidential file containing
42 the names of those people for whom it received a notice under G.S. 15A-150. The information
43 contained in the file may be disclosed only as follows:

- 44 (1) To a judge of the General Court of Justice of North Carolina for the purpose
45 of ascertaining whether a person charged with an offense has been
46 previously granted a discharge or an expunction.
- 47 (2) To a person requesting confirmation of the person's own discharge or
48 expunction, as provided in G.S. 15A-152.
- 49 (3) To the General Court of Justice of North Carolina in response to a subpoena
50 or other court order issued pursuant to a civil action under G.S. 15A-152.

- 1 (4) If the criminal record was expunged pursuant to G.S. 15A-145.4 or
- 2 G.S. 15A-145.5, to State and local law enforcement agencies for
- 3 employment purposes only.
- 4 (5) If the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5,
- 5 or [15A-]145.6, to the North Carolina Criminal Justice Education and
- 6 Training Standards Commission for certification purposes only.
- 7 (6) If the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5,
- 8 or 15A-145.6, to the North Carolina Sheriffs' Education and Training
- 9 Standards Commission for certification purposes only.
- 10 (7) If the criminal record was expunged pursuant to a second or subsequent
- 11 petition under G.S. 15A-146, to local law enforcement agencies.
- 12 (8) If the criminal record was expunged pursuant to a second or subsequent
- 13 petition under G.S. 15A-146, to offices of the district attorney.

14"

15 **SECTION 4.** This act becomes effective December 1, 2015, and applies to

16 petitions filed on or after that date.