

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 863

Short Title: Qualifications for Sheriff/Expunctions. (Public)

Sponsors: Representatives McNeill and C. Smith (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Elections and Ethics Law, if favorable, Finance, if favorable, Rules, Calendar, and Operations of the House

April 22, 2019

A BILL TO BE ENTITLED

AN ACT TO REQUIRE A CANDIDATE OR APPOINTEE FOR THE OFFICE OF SHERIFF TO DISCLOSE ALL FELONY CONVICTIONS, INCLUDING ANY EXPUNGED CONVICTIONS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 162-2 reads as rewritten:

"§ 162-2. **Disqualifications for the office.**

(a) No person shall be eligible for the office of sheriff ~~who is~~ if any of the following apply:

(1) The person is not of the age of 21 years, years.

(2) The person has been convicted of a felony in this State, the United States, or any other state, whether or not that person has been restored to the rights of citizenship or granted an expunction. This subdivision shall not include an unconditional pardon of innocence.

(3) ~~or has~~ The person is not resided a qualified voter in the county in which he the candidate is chosen for one year immediately preceding his election. chosen.

(b) Notwithstanding Article 5 of Chapter 15A of the General Statutes, any person filing a notice of candidacy, or any appointee selected to fill a vacancy, to the office of sheriff shall provide a statement of disclosure prepared by the North Carolina Sheriffs' Education and Training Standards Commission in accordance with Article 3 of Chapter 17E of the General Statutes.

(c) No person shall engage in the practice of law or serve as a member of the General Assembly while serving as sheriff."

SECTION 2. G.S. 163A-972 reads as rewritten:

"§ 163A-972. **Notices of candidacy; pledge; with whom filed; date for filing.**

...

(e) Disclosure of Felony Conviction. – At Except for candidates to the office of sheriff as provided in subsection (f) of this section, at the same time the candidate files notice of candidacy under this section and G.S. 163A-973, 163A-974, 163A-975, 163A-977, and 163A-978, the candidate shall file with the same office a statement answering the following question: "Have you ever been convicted of a felony?" The State Board shall adapt the notice of candidacy form to include the statement required by this subsection. The form shall make clear that a felony conviction need not be disclosed if the conviction was dismissed as a result of reversal on appeal or resulted in a pardon of innocence or expungement. The form shall require



1 a candidate who answers "yes" to the question to provide the name of the offense, the date of
2 conviction, the date of the restoration of citizenship rights, and the county and state of conviction.
3 The form shall require the candidate to swear or affirm that the statements on the form are true,
4 correct, and complete to the best of the candidate's knowledge or belief. The form shall be
5 available as a public record in the office of the board of elections where the candidate files notice
6 of candidacy and shall contain an explanation that a prior felony conviction does not preclude
7 holding elective office if the candidate's rights of citizenship have been restored. This subsection
8 shall also apply to individuals who become candidates for election by the people under
9 G.S. 163A-987, 163A-1005, 163A-1006, 163A-953, 115C-37, 130A-50, Part 2 of Article 27 of
10 this Chapter, or any other statute or local act. Those individuals shall complete the question at
11 the time the documents are filed initiating their candidacy. The State Board shall adapt those
12 documents to include the statement required by this subsection. If an individual does not
13 complete the statement required by this subsection, the board of elections accepting the filing
14 shall notify the individual of the omission, and the individual shall have 48 hours after notice to
15 complete the statement. If the individual does not complete the statement at the time of filing or
16 within 48 hours after the notice, the individual's filing is not complete, the individual's name shall
17 not appear on the ballot as a candidate, and votes for ~~the~~ that individual shall not be counted. It
18 is a Class I felony to complete the form knowing that information as to felony conviction or
19 restoration of citizenship is untrue. This subsection shall not apply to candidates required by
20 G.S. 163A-187(f) to file Statements of Economic Interest.

21 (f) Disclosure of Felony Convictions and Expungements for the Office of Sheriff. – At
22 the time of filing the notice of candidacy each candidate to the office of sheriff shall file a valid
23 disclosure statement prepared in accordance with G.S. 17E-20 verifying that individual has no
24 prior felony convictions or expungements of felony convictions. If a candidate does not file such
25 valid disclosure statement required by this subsection, that individual's filing is not complete, the
26 individual's name shall not appear on the ballot as a candidate, and votes for that individual shall
27 not be counted in accordance with Section 2 of Article VII of the North Carolina Constitution."

28 **SECTION 3.(a)** G.S. 17E-1 through G.S. 17E-6 and G.S. 17E-10 are recodified as
29 Article 1 of Chapter 17E of the General Statutes as follows:

30 "Article 1.

31 "General."

32 **SECTION 3.(b)** G.S. 17E-7 through G.S. 17E-19, with the exception of
33 G.S. 17E-10, are recodified as Article 2 of Chapter 17E of the General Statutes as follows:

34 "Article 2.

35 "Justice Officers."

36 **SECTION 3.(c)** When recodifying pursuant to this section, the Revisor may separate
37 subsections of existing statutory sections into new sections and, when necessary to organize
38 relevant law into its proper place in Chapter 17E of the General Statutes, as amended by this act,
39 may rearrange sentences that currently appear within subsections. The Revisor may modify
40 statutory citations throughout the General Statutes, as appropriate, and may modify any
41 references to statutory divisions, such as "Chapter," "Subchapter," "Article," "Part," "section,"
42 and "subsection," adjust the order of lists of multiple statutes to maintain statutory order, correct
43 terms and conform names and titles changed by this act, and make conforming changes to catch
44 lines and references to catch lines. The Revisor may also adjust subject and verb agreement and
45 the placement of conjunctions. The Revisor shall consult with the North Carolina Sheriffs'
46 Education and Training Standards Commission on this recodification.

47 **SECTION 4.** G.S. 17E-4(b), as recodified by Section 3 of this act, is amended by
48 adding a new subdivision to read:

49 "(13) Prepare disclosure statements for candidates and potential appointees for the
50 office of sheriff with respect to felony convictions and expunctions, as

1 Notwithstanding G.S. 15A-145.4 or G.S. 15A-145.5, the Commission may gain access to an
2 individual's felony conviction records, including those maintained by the Administrative Office
3 of the Courts in its confidential files containing the names of persons granted expunctions for the
4 purposes of this Article.

5 **"§ 17E-26 through 17E-29. Reserved.**

6 **"§ 17E-30. Expiration of disclosure of convictions and expungements for the office of**
7 **sheriff.**

8 Any disclosure statement prepared by the Commission shall be valid for the purpose of filing
9 in accordance with G.S. 163A-972, 162-5, or 162-5.1 for 90 days after issuance."

10 **SECTION 7.** G.S. 15A-151(a) reads as rewritten:

11 "(a) The Administrative Office of the Courts shall maintain a confidential file for
12 expungements containing the petitions granted under this Article and the names of those people
13 for whom it received a notice under G.S. 15A-150. The information contained in the file may be
14 disclosed only as follows:

- 15 (1) Upon request of a judge of the General Court of Justice of North Carolina for
16 the purpose of ascertaining whether a person charged with an offense has been
17 previously granted a discharge or an expunction.
- 18 (2) Upon request of a person requesting confirmation of the person's own
19 discharge or expunction.
- 20 (3) To the General Court of Justice of North Carolina in response to a subpoena
21 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 22 (4) Upon request of State or local law enforcement, if the criminal record was
23 expunged ~~pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6~~ under this
24 Chapter for employment purposes only.
- 25 (5) Upon the request of the North Carolina Criminal Justice Education and
26 Training Standards Commission, if the criminal record was expunged
27 ~~pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6~~ under this Chapter
28 for certification purposes only.
- 29 (6) Upon request of the North Carolina Sheriff's Standards Commission, if the
30 criminal record was expunged ~~pursuant to G.S. 15A-145.4, 15A-145.5, or~~
31 ~~15A-145.6~~ under this Chapter for certification purposes only.
- 32 (7) To the district attorney in accordance with G.S. 15A-151.5.
- 33 (8) Upon request of the North Carolina Sheriffs' Education and Training
34 Standards Commission, if the criminal record was expunged under this
35 Chapter for purposes of preparing a disclosure statement in accordance with
36 Article 3 of Chapter 17E of the General Statutes."

37 **SECTION 8.(a)** G.S. 15A-153 reads as rewritten:

38 **"§ 15A-153. Effect of expunction; prohibited practices by employers, educational**
39 **institutions, agencies of State and local governments.**

40 ...

41 (e) [Exceptions. –] The provisions of subsection (d) of this section do not apply to any
42 applicant or licensee seeking or holding any certification issued by the North Carolina Criminal
43 Justice Education and Training Standards Commission pursuant to Article 1 of Chapter 17C of
44 the General Statutes or the North Carolina Sheriffs Education and Training Standards
45 Commission pursuant to Article 2 of Chapter 17E of the General Statutes:

- 46 (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing
47 certification under the provisions of Article 1 of Chapter 17C or Article 2 of
48 Chapter 17E of the General Statutes shall disclose any and all felony
49 convictions to the certifying Commission regardless of whether or not the
50 felony convictions were expunged pursuant to the provisions of
51 G.S. 15A-145.4.

1 (2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing
2 certification under the provisions of Article 1 of Chapter 17C or Article 2 of
3 Chapter 17E of the General Statutes shall disclose any and all convictions to
4 the certifying Commission regardless of whether or not the convictions were
5 expunged pursuant to the provisions of G.S. 15A-145.5.

6 (e1) The provisions of subsection (d) of this section do not apply to any individual
7 requesting a disclosure statement be prepared by the North Carolina Sheriffs' Education and
8 Training Standards Commission pursuant to Article 3 of Chapter 17E of the General Statutes.

9"

10 **SECTION 8.(b)** G.S. 15A-145.4 reads as rewritten:

11 **"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
12 **the time of the commission of a nonviolent felony.**

13 ...

14 (f) No person as to whom an order has been entered pursuant to subsection (e) of this
15 section shall be held thereafter under any provision of any laws to be guilty of perjury or
16 otherwise giving a false statement by reason of that person's failure to recite or acknowledge the
17 arrest, indictment, information, trial, or conviction. ~~Persons pursuing certification under the~~
18 ~~provisions of Article 1 of Chapter 17C or 17E of the General Statutes, however, shall disclose~~
19 ~~any and all felony convictions to the certifying Commission regardless of whether or not the~~
20 ~~felony convictions were expunged pursuant to the provisions of this section.~~ This subsection shall
21 not apply to a sentencing hearing when the person has been convicted of a subsequent criminal
22 offense.

23 (f1) Persons required by State law to obtain a criminal history record check on a
24 prospective employee shall not be deemed to have knowledge of any convictions expunged under
25 this section.

26 (f2) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or
27 Article 2 of Chapter 17E of the General Statutes, however, shall disclose any and all felony
28 convictions to the certifying Commission regardless of whether or not the felony convictions
29 were expunged pursuant to the provisions of this section.

30 (f3) Persons requesting a disclosure statement be prepared by the North Carolina Sheriffs'
31 Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the
32 General Statutes, however, shall disclose any and all felony convictions to the North Carolina
33 Sheriffs' Education and Training Standards Commission regardless of whether or not the felony
34 convictions were expunged pursuant to the provisions of this section.

35"

36 **SECTION 8.(c)** G.S. 15A-145.5 reads as rewritten:

37 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

38 ...

39 (d1) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or
40 Article 2 of Chapter 17E of the General Statutes, however, shall disclose any and all convictions
41 to the certifying Commission, regardless of whether or not the convictions were expunged
42 pursuant to the provisions of this section.

43 (d2) Persons requesting a disclosure statement be prepared by the North Carolina Sheriffs'
44 Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the
45 General Statutes, however, shall disclose any and all felony convictions to the North Carolina
46 Sheriffs' Education and Training Standards Commission regardless of whether or not the felony
47 convictions were expunged pursuant to the provisions of this section.

48 (d3) Persons required by State law to obtain a criminal history record check on a
49 prospective employee shall not be deemed to have knowledge of any convictions expunged under
50 this section.

51"

1 **SECTION 8.(d)** G.S. 15A-145.6 reads as rewritten:

2 "**§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

3 ...

4 (g1) Persons pursuing certification under the provisions of Article 1 of Chapter 17C or
5 Article 2 of 17E of the General Statutes, however, shall disclose any and all prostitution
6 convictions to the certifying Commission regardless of whether or not the prostitution
7 convictions were expunged pursuant to the provisions of this section.

8 (g2) Persons requesting a disclosure statement be prepared by the North Carolina Sheriffs'
9 Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the
10 General Statutes, however, shall disclose any and all felony convictions to the North Carolina
11 Sheriffs' Education and Training Standards Commission regardless of whether or not the felony
12 convictions were expunged pursuant to the provisions of this section.

13 (g3) Persons required by State law to obtain a criminal history record check on a
14 prospective employee shall not be deemed to have knowledge of any convictions expunged under
15 this section.

16 "

17 **SECTION 9.(a)** G.S. 162-5 reads as rewritten:

18 "**§ 162-5. Vacancy filled; duties performed by coroner or chief deputy.**

19 (a) If any vacancy occurs in the office of sheriff, the coroner of the county shall execute
20 all process directed to the sheriff until the first meeting of the board of county commissioners
21 next succeeding such vacancy, when the board of county commissioners shall elect-appoint a
22 sheriff to supply the vacancy for the residue of the term, who shall possess the same
23 qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly
24 elected.

25 (b) If the board of county commissioners should fail to fill such vacancy, the coroner
26 shall continue to discharge the duties of sheriff until it shall be filled. In those counties where the
27 office of coroner has been abolished, the chief deputy sheriff, or if there is no chief deputy, then
28 the senior deputy in years of service, shall perform all the duties of the sheriff until the board of
29 county commissioners appoint some person to fill the unexpired term. In all counties the regular
30 deputy sheriffs shall, during the interim of the vacancy, continue to perform their duties with full
31 authority.

32 (c) The board of county commissioners shall not make any appointment under this
33 section without first being presented with a valid disclosure statement of no felony convictions
34 or expungements, issued within 90 days prior to the appointment, prepared by the North Carolina
35 Sheriffs' Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of
36 the General Statutes with respect to the individual being appointed."

37 **SECTION 9.(b)** G.S. 162-5.1 reads as rewritten:

38 "**§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.**

39 (a) If any vacancy occurs in the office of sheriff, the coroner of the county shall execute
40 all process directed to the sheriff until the board of county commissioners shall elect-appoint
41 a sheriff to supply the vacancy for the residue of the term, who shall possess the same
42 qualifications, enter into the same bond, and be subject to removal, as the sheriff regularly
43 elected.

44 (b) If the sheriff were elected as a nominee of a political party, the board of county
45 commissioners shall consult the county executive committee of that political party before filling
46 the vacancy, and shall elect-appoint the person recommended by the county executive committee
47 of that party, if the party makes a recommendation within 30 days of the occurrence of the
48 vacancy.

49 (c) If the board should fail to fill such vacancy, the coroner shall continue to discharge
50 the duties of sheriff until it shall be filled. In those counties where the office of coroner has been
51 abolished, the chief deputy sheriff, or if there is no chief deputy, then the senior deputy in years

1 of service, shall perform all the duties of the sheriff until the board of county commissioners
2 appoint some person to fill the unexpired term. In all counties the regular deputy sheriffs shall,
3 during the interim of the vacancy, continue to perform their duties with full authority.

4 (d) The board of county commissioners shall not make any appointment under this
5 section without first being presented with a valid disclosure statement of no felony convictions
6 or expungements, issued within 90 days prior to the appointment, prepared by the North Carolina
7 Sheriffs' Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of
8 the General Statutes with respect to the individual being appointed.

9 (e) This section shall apply only in the following counties: Alamance, Alexander,
10 Alleghany, Avery, Beaufort, Brunswick, Buncombe, Burke, Cabarrus, Caldwell, Carteret,
11 Cherokee, Clay, Cleveland, Davidson, Davie, Edgecombe, Forsyth, Gaston, Graham, Guilford,
12 Haywood, Henderson, Hyde, Jackson, Lee, Lincoln, Madison, McDowell, Mecklenburg, Moore,
13 New Hanover, Onslow, Pender, Polk, Randolph, Richmond, Rockingham, Rutherford, Sampson,
14 Stokes, Surry, Transylvania, Wake, Washington, Wayne, and Yancey."

15 **SECTION 10.** Article 13 of Chapter 143B of the General Statutes is amended by
16 adding a new section to read:

17 "**§ 143B-972. Criminal record checks for sheriffs.**

18 (a) The Department of Public Safety may provide to the North Carolina Sheriffs'
19 Education and Training Standards Commission a criminal history from the State and National
20 Repositories of Criminal Histories for any person filing a notice of candidacy, or any potential
21 appointee to fill a vacancy, to the office of sheriff. The North Carolina Sheriffs' Education and
22 Training Standards Commission shall provide to the Department of Public Safety, along with the
23 request, the fingerprints of the person filing a notice of candidacy, or any potential appointee to
24 fill a vacancy, to the office of sheriff, a form signed by the individual consenting to the criminal
25 record check and use of fingerprints and other identifying information required by the State and
26 National Repositories, and any additional information required by the Department of Public
27 Safety. The fingerprints of the individual shall be forwarded to the State Bureau of Investigation
28 for a search of the State's criminal history record file, and the State Bureau of Investigation shall
29 forward a set of fingerprints to the Federal Bureau of Investigation for a national criminal history
30 record check.

31 (b) The criminal history report shall be provided to the North Carolina Sheriffs' Education
32 and Training Standards Commission, who shall keep all information obtained pursuant to this
33 section confidential to the North Carolina Sheriffs' Education and Training Standards
34 Commission. A criminal history report obtained as provided in this section is not a public record
35 under Chapter 132 of the General Statutes."

36 **SECTION 11.** This act is effective when it becomes law and applies to elections and
37 appointments to the office of sheriff on or after that date.