

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021**

**SENATE BILL 301
RATIFIED BILL**

AN ACT TO ALLOW FOR THE EXPUNCTION OF UP TO THREE NONVIOLENT FELONIES, TO EXPAND THE DEFINITION FOR THE TERM "NONVIOLENT FELONY," 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, AND TO ALLOW ACCESS TO EXPUNCTION RECORDS FOR DETERMINING CONDITIONAL DISCHARGE ELIGIBILITY.

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 nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent



misdemeanor convictions shall be expunged from the person's record in accordance with this section.

(c) A person may file a petition, in the court of the county where the person was convicted, ~~for expunction of one or more nonviolent misdemeanor convictions or one nonviolent felony conviction from the person's criminal record.~~ convicted.

(1) ~~The~~ For expunction of one or more nonviolent misdemeanor convictions, the petition shall not be filed earlier than one of the following:

~~(1)~~a. For expunction of one nonviolent misdemeanor, five years after the date of the conviction or when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.

~~(2)~~b. For expunction of more than one nonviolent misdemeanor, seven years after the date of the person's last conviction, other than a traffic offense not listed in the petition for expunction, or seven years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.

(2) For expunction of up to three nonviolent felony convictions, the petition shall not be filed earlier than one of the following:

~~(3)~~a. For expunction of one nonviolent felony, 10 years after the date of the conviction or 10 years after any active sentence, period of probation, or post-release supervision, related to the conviction listed in the petition, has been served, whichever occurs later.

b. For expunction of two or three nonviolent felonies, 20 years after the date of the most recent conviction listed in the petition, or 20 years after any active sentence, period of probation, or post-release supervision, related to a conviction listed in the petition, has been served, whichever occurs later.

A person previously granted an expunction under this section is not eligible for relief under this section for any offense committed after the date of the previous order for expunction. Except as provided in subsections (c4) and (c5) of this section, a person previously granted an expunction under this section for one or more misdemeanors is not eligible for expunction of additional misdemeanors under this section and a person previously granted an expunction under this section for one or more felonies is not eligible for expunction of additional felonies under this section.

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

(1) An affidavit by the petitioner that the petitioner is of good moral character 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 during the applicable five-year, seven-year, ~~or 10-year~~ 10-year, or 20-year waiting period set forth in subsection (c) of this section.

(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 outstanding warrants on pending criminal cases, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.
- (6) An affidavit by the petitioner providing information on any additional petitions the petitioner has submitted, or intends to submit, in other counties pursuant to subsection (c4) of this section seeking expunction of additional convictions.
- (7) An acknowledgement by the petitioner that, except as provided in subsection (c5) of this section, the expunction of one nonviolent misdemeanor prior to the seven-year waiting period or one nonviolent felony prior to the 20-year waiting period will preclude the petitioner from expunging additional nonviolent misdemeanors or nonviolent felonies that might otherwise be eligible for expunction pursuant to sub-subdivision b. of subdivision (1) of subsection (c) of this section or sub-subdivision b. of subdivision (2) of subsection (c) of this section.

Upon filing of the petition, the petition shall be served upon the district attorney of the court wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing. Upon request by the victim, the victim has a right to be present at any hearing on the petition for expunction and the victim's views and concerns shall be considered by the court at such hearing.

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

(c2) The court, after hearing a petition for expunction of one or more nonviolent misdemeanors, shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information, except as provided in G.S. 15A-151.5, if the court finds all of the following:

- (1) One of the following:
 - a. The petitioner has not previously been granted an expunction under this section ~~prior to the date of any offense the current petition requests be expunged for one or more nonviolent misdemeanors.~~
 - b. Any previous expunction granted to the petitioner under this section for one or more nonviolent misdemeanors was granted pursuant to a petition filed prior to December 1, 2021.
- (2) The petitioner is of good moral character.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, during the applicable

five-year or seven-year waiting period set forth in subsection (c) of this section.

- (5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (6) The petitioner meets one of the following criteria:
 - a. For a petition for expunction of one nonviolent misdemeanor, the petitioner has no convictions for any other felony or misdemeanor, other than a traffic offense.
 - b. For a petition for expunction of more than one nonviolent misdemeanor, the petitioner has no convictions for a misdemeanor or felony that is listed as an exception to the terms "nonviolent misdemeanor" or "nonviolent felony" as provided in subsection (a) of this section.
- (7) The petitioner was convicted of an offense or offenses eligible for expunction under this section.
- (8) The petitioner has completed the applicable five-year or seven-year waiting period set forth in subsection (c) of this section.

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

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

- (1) One of the following:
 - a. The petitioner has not previously been granted an expunction under this section ~~prior to the date of any offense the current petition requests be expunged for one or more nonviolent felonies.~~
 - b. Any previous expunction granted to the petitioner under this section for a felony was granted pursuant to a petition filed prior to December 1, 2021.
- (2) The petitioner is of good moral character.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) ~~The~~ If the petition is for the expunction of one felony, the petitioner has no misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, in the five years preceding the petition, and no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, convictions during the applicable 10-year waiting period set forth in subsection (c) of this section.
- (4a) If the petition is for the expunction of two or three felonies, or if the petitioner has filed petitions in more than one county pursuant to subsection (c4) of this section, the petitioner has no misdemeanor convictions other than a traffic violation not listed in the petition for expunction in the five years preceding the petition, and no other felony convictions during the applicable 20-year waiting period set forth in subsection (c) of this section.
- (4b) If the petition is for the expunction of two or three felonies, if the petitioner has filed petitions in more than one county pursuant to subsection (c4) of this section, or if the petition is filed pursuant to subsection (c5) of this section, the felony offenses were committed within the same 24-month period.
- (5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.

- (6) The petitioner has no convictions for a misdemeanor that is listed as an exception to the term "nonviolent misdemeanor" as provided in subsection (a) of this section or any other felony offense.
- (7) The petitioner was convicted of an offense eligible for expunction under this section.
- (8) The petitioner has completed the applicable 10-year or 20-year waiting period set forth in subsection (c) of this section.

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

(c4) A person petitioning for expunction of multiple convictions pursuant to sub-subdivision b. of subdivision (1) of subsection (c) of this section or sub-subdivision b. of subdivision (2) of subsection (c) of this section, where the convictions were obtained in more than one county, shall file a petition in each county of conviction. All petitions shall be filed within a 30-day period. The granting of one petition shall not preclude the granting of any other petition filed within the same 30-day period.

(c5) A person granted an expunction under this section of one or more nonviolent misdemeanors pursuant to a petition filed prior to December 1, 2021, may petition for the expunction of additional nonviolent misdemeanors if the offenses were committed prior to the date of the previous expunction. A person granted an expunction under this section of one nonviolent felony pursuant to a petition filed prior to December 1, 2021, may petition for the expunction of up to two additional nonviolent felonies if the offenses were committed prior to the date of the previous expunction and within the same 24-month period as the previously expunged felony.

...."

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

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

SECTION 3. G.S. 15A-151(a) reads as rewritten:

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

...

- (8) For disclosure of records of previous dismissal pursuant to conditional discharge, upon joint request of the district attorney and the defendant in a pending proceeding for the purpose of determining eligibility for a conditional discharge. Any report disclosed in response to the joint request shall be delivered only to the clerk of superior court of the county in which the matter is pending. Upon receipt of the report from the Administrative Office of the Courts, the clerk shall provide a copy to the district attorney and to the defendant. The clerk shall otherwise maintain the information as a confidential record in the court file for the case."

SECTION 4. G.S. 15A-151.5 is amended by adding a new subsection to read:

"(d) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all records of dismissals pursuant to conditional discharge maintained under G.S. 15A-151 electronically available to all prosecutors of this State."

SECTION 5. This act becomes effective December 1, 2021. Sections 1 and 2 of this act apply to petitions filed on or after that date.

In the General Assembly read three times and ratified this the 19th day of August, 2021.

s/ Phil Berger
President Pro Tempore of the Senate

s/ Tim Moore
Speaker of the House of Representatives

Roy Cooper
Governor

Approved _____m. this _____ day of _____, 2021