

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2019

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HOUSE BILL 863
PROPOSED COMMITTEE SUBSTITUTE H863-PCS10696-STf-53

Short Title: Qualifications for Sheriff/Expunctions.

(Public)

Sponsors:

Referred to:

April 22, 2019

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE A CANDIDATE OR APPOINTEE FOR THE OFFICE OF SHERIFF
3 TO DISCLOSE ALL FELONY CONVICTIONS, INCLUDING ANY EXPUNGED
4 CONVICTIONS.

5 The General Assembly of North Carolina enacts:

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

7 "§ 162-2. Disqualifications for the office.

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

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

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

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

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

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

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

25 "§ 163A-972. Notices of candidacy; pledge; with whom filed; date for filing.

26 ...

27 (e) Disclosure of Felony Conviction. – ~~At~~ Except for candidates to the office of sheriff
28 as provided in subsection (f) of this section, at the same time the candidate files notice of
29 candidacy under this section and G.S. 163A-973, 163A-974, 163A-975, 163A-977, and
30 163A-978, the candidate shall file with the same office a statement answering the following
31 question: "Have you ever been convicted of a felony?" The State Board shall adapt the notice of
32 candidacy form to include the statement required by this subsection. The form shall make clear
33 that a felony conviction need not be disclosed if the conviction was dismissed as a result of
34 reversal on appeal or resulted in a pardon of innocence or expungement. The form shall require
35 a candidate who answers "yes" to the question to provide the name of the offense, the date of
36 conviction, the date of the restoration of citizenship rights, and the county and state of conviction.



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

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

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

28 "Article 1.

29 "General."

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

32 "Article 2.

33 "Justice Officers."

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

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

47 "(13) Prepare disclosure statements for candidates and potential appointees for the
48 office of sheriff with respect to felony convictions and expunctions, as
49 provided for in this Chapter. The Commission may charge a fee of the
50 applicant to cover the cost of any criminal history check."

51 **SECTION 5.** G.S. 17E-11, as recodified by Section 3 of this act, reads as rewritten:

1 **"§ 17E-11. Application and construction of ~~Chapter~~ Article.**

2 (a) Nothing in this ~~Chapter~~ Article shall apply to the sheriff elected by the people.

3 (b) Nothing in this ~~Chapter~~ Article shall be construed as modifying the character of a
4 sheriff from an elective office, or as modifying the character of the office of deputy sheriff from
5 an appointive office.

6 (c) If a justice officer, or a criminal justice officer as defined in G.S. 17C-2(c), becomes
7 sheriff, the justice officer is not required to maintain certification for the period served as sheriff.
8 The Commission shall reinstate certification upon the conclusion of the period of service as
9 sheriff and in conformance with the rules of the Commission for the application for certification."

10 **SECTION 6.** Chapter 17E of the General Statutes is amended by adding a new
11 Article to read:

12 "Article 3.

13 "Sheriffs.

14 **"§ 17E-20. Disclosure of convictions and expungements for the office of sheriff.**

15 (a) Each individual filing, or intending to file, a notice of candidacy for election, or any
16 individual prior to appointment to fill a vacancy, to the office of sheriff shall request the
17 Commission to prepare a disclosure statement verifying that individual has no prior felony
18 convictions or expungements of felony convictions. The individual shall provide such
19 information as required by the Commission for the completion of the disclosure statement,
20 including any evidence that the individual has been granted an unconditional pardon of innocence
21 for a felony crime in this State, any other state, or the United States, and any fee to cover the cost
22 of the criminal background check.

23 (b) Upon the request of an individual filing, or intending to file, a notice of candidacy for
24 election as sheriff, or any individual prior to appointment to fill a vacancy to the office of sheriff,
25 the Commission shall prepare a disclosure statement verifying that the individual has no prior
26 felony convictions or expungements for felony convictions. The disclosure statement shall be in
27 a format as determined by the Commission, but shall include at least all of the following:

28 (1) Name of the individual.

29 (2) Date the disclosure statement was prepared.

30 (3) County of residence of the individual.

31 (4) A statement that individual has no prior felony convictions or expungements
32 for felony convictions, if in fact the individual has no prior felony convictions
33 or expungements for felony convictions.

34 (c) In preparing the disclosure statement, the Commission shall do at least all of the
35 following:

36 (1) Conduct a criminal history record check of state and national databases to
37 determine if the individual has a record of a felony conviction.

38 (2) Contact the Administrative Office of the Courts and request confirmation of
39 whether or not the individual has previously received an expunction of a
40 felony record.

41 (3) Determine if the individual has ever been convicted of a felony in violation of
42 Section 2 of Article VII of the North Carolina Constitution.

43 (d) Any request for a disclosure statement, any supporting documentation used in the
44 preparation of any disclosure statement, and any disclosure statement prepared by the
45 Commission in accordance with this section is confidential and not a public record under Chapter
46 132 of the General Statutes.

47 **"§ 17E-21 through 17E-24. Reserved.**

48 **"§ 17E-25. Expunction records access.**

49 Notwithstanding G.S. 15A-145.4 or G.S. 15A-145.5, the Commission may gain access to an
50 individual's felony conviction records, including those maintained by the Administrative Office

1 of the Courts in its confidential files containing the names of persons granted expunctions for the
2 purposes of this Article.

3 "§ 17E-26 through 17E-29. Reserved.

4 "§ 17E-30. Expiration of disclosure of convictions and expungements for the office of
5 sheriff.

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

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

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

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

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

36 "**§ 15A-153. Effect of expunction; prohibited practices by employers, educational**
37 **institutions, agencies of State and local governments.**

38 ...

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

- 44 (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing
45 certification under the provisions of Article 1 of Chapter 17C or Article 2 of
46 Chapter 17E of the General Statutes shall disclose any and all felony
47 convictions to the certifying Commission regardless of whether or not the
48 felony convictions were expunged pursuant to the provisions of
49 G.S. 15A-145.4.
- 50 (2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing
51 certification under the provisions of Article 1 of Chapter 17C or Article 2 of

1 Chapter 17E of the General Statutes shall disclose any and all convictions to
2 the certifying Commission regardless of whether or not the convictions were
3 expunged pursuant to the provisions of G.S. 15A-145.5.

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

7"

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

9 "**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
10 **the time of the commission of a nonviolent felony.**

11 ...

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

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

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

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

33"

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

35 "**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

36 ...

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

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

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

49"

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

51 "**§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

1 ...

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

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

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

14"

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

16 "**§ 162-5. Vacancy filled; duties performed by coroner or chief deputy.**

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

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

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

35 **SECTION 9.(b)** G.S. 162-5.1, as amended by S.L. 2019-5, reads as rewritten:

36 "**§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.**

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

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

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

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

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

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

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

16 **"§ 143B-972. Criminal record checks for sheriffs.**

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

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

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