

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

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HOUSE BILL 312
Committee Substitute Favorable 3/30/21
PROPOSED SENATE COMMITTEE SUBSTITUTE H312-PCS40644-TG-28

Short Title: Qualifications for Sheriff/Expunction.

(Public)

Sponsors:

Referred to:

March 17, 2021

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. 163-106 reads as rewritten:

25 "§ 163-106. **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. 163-106.1, 163-106.2, 163-106.3, 163-106.5, and
30 163-106.6, 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 of Elections shall adapt
32 the notice of candidacy form to include the statement required by this subsection. The form shall
33 make clear that a felony conviction need not be disclosed if the conviction was dismissed as a
34 result of reversal on appeal or resulted in a pardon of innocence or expungement. The form shall
35 require a candidate who answers "yes" to the question to provide the name of the offense, the



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1 date of conviction, the date of the restoration of citizenship rights, and the county and state of
2 conviction. The form shall require the candidate to swear or affirm that the statements on the
3 form are true, correct, and complete to the best of the candidate's knowledge or belief. The form
4 shall be available as a public record in the office of the board of elections where the candidate
5 files notice of candidacy and shall contain an explanation that a prior felony conviction does not
6 preclude holding elective office if the candidate's rights of citizenship have been restored. This
7 subsection shall also apply to individuals who become candidates for election by the people under
8 G.S. 163-114, 163-122, 163-123, 163-98, 115C-37, 130A-50, Article 24 of this Chapter, or any
9 other statute or local act. Those individuals shall complete the question at the time the documents
10 are filed initiating their candidacy. The State Board of Elections shall adapt those documents to
11 include the statement required by this subsection. If an individual does not complete the statement
12 required by this subsection, the board of elections accepting the filing shall notify the individual
13 of the omission, and the individual shall have 48 hours after notice to complete the statement. If
14 the individual does not complete the statement at the time of filing or within 48 hours after the
15 notice, the individual's filing is not complete, the individual's name shall not appear on the ballot
16 as a candidate, and votes for ~~the~~that individual shall not be counted. It is a Class I felony to
17 complete the form knowing that information as to felony conviction or restoration of citizenship
18 is untrue. This subsection shall not apply to candidates required by G.S. 138A-22(f) to file
19 Statements of Economic Interest.

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

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

29 "Article 1.

30 "General."

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

33 "Article 2.

34 "Justice Officers."

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

46 **SECTION 4.** G.S. 17E-11, as recodified by Section 3 of this act, reads as rewritten:
47 **"§ 17E-11. Application and construction of ~~Chapter~~Article.**

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

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

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

5 **SECTION 5.** Chapter 17E of the General Statutes is amended by adding a new
6 Article to read:

7 "Article 3.

8 "Sheriffs.

9 **"§ 17E-20. Disclosure of convictions and expungements for the office of sheriff.**

10 (a) Each individual filing, or intending to file, a notice of candidacy for election or any
11 individual prior to appointment to fill a vacancy to the office of sheriff shall request the
12 Commission to prepare a disclosure statement verifying that individual has no prior felony
13 convictions or expungements of felony convictions. The individual shall provide such
14 information as required by the Commission for the completion of the disclosure statement,
15 including any evidence that the individual has been granted an unconditional pardon of innocence
16 for a felony crime in this State, any other state, or the United States.

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

22 (1) Name of the individual.

23 (2) Date the disclosure statement was prepared.

24 (3) County of residence of the individual.

25 (4) A statement that the individual has no prior felony convictions or
26 expungements for felony convictions, if in fact the individual has no prior
27 felony convictions or expungements for felony convictions.

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

30 (1) Conduct a criminal history record check of State and national databases to
31 determine if the individual has a record of a felony conviction.

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

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

37 (d) Any request for a disclosure statement, any supporting documentation used in the
38 preparation of any disclosure statement, and any disclosure statement prepared by the
39 Commission in accordance with this section is confidential and not a public record under Chapter
40 132 of the General Statutes.

41 **"§§ 17E-21 through 17E-24.** Reserved for future codification purposes.

42 **"§ 17E-25. Expunction records access.**

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

47 **"§§ 17E-26 through 17E-29.** Reserved for future codification purposes.

48 **"§ 17E-30. Expiration of disclosure of convictions and expungements for the office of**
49 **sheriff.**

50 Any disclosure statement prepared by the Commission shall be valid for the purpose of filing
51 in accordance with G.S. 163-106, 162-5, or 162-5.1 for 90 days after issuance."

1 **SECTION 6.** G.S. 15A-151(a) reads as rewritten:

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

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

28 **SECTION 7.(a)** G.S. 15A-153 reads as rewritten:

29 "**§ 15A-153. Effect of expunction; prohibited practices by employers, educational**
30 **institutions, agencies of State and local governments.**

31 ...

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

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

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

51 "

1 **SECTION 7.(b)** G.S. 15A-145.4 reads as rewritten:

2 "**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
3 **the time of the commission of a nonviolent felony.**

4 ...

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

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

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

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

26 "

27 **SECTION 7.(c)** G.S. 15A-145.5 reads as rewritten:

28 "**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

29 ...

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

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

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

42 "

43 **SECTION 7.(d)** G.S. 15A-145.6 reads as rewritten:

44 "**§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.**

45 ...

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

50 (g2) Persons requesting a disclosure statement be prepared by the North Carolina Sheriffs'
51 Education and Training Standards Commission pursuant to Article 3 of Chapter 17E of the

1 General Statutes, however, shall disclose any and all felony convictions to the North Carolina
2 Sheriffs' Education and Training Standards Commission regardless of whether or not the felony
3 convictions were expunged pursuant to the provisions of this section.

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

7"

8 **SECTION 8.(a)** G.S. 162-5 reads as rewritten:

9 **"§ 162-5. Vacancy filled; duties performed by coroner or chief deputy.**

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

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

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

28 **SECTION 8.(b)** G.S. 162-5.1, as amended by S.L. 2019-5, reads as rewritten:

29 **"§ 162-5.1. Vacancy filled in certain counties; duties performed by coroner or chief deputy.**

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

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

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

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

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

7 **SECTION 9.** Article 13 of Chapter 143B of the General Statutes is amended by
8 adding a new section to read:

9 "**§ 143B-974. Criminal record checks for sheriffs.**

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

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

28 **SECTION 10.** This act becomes effective October 1, 2021, and applies to elections
29 and appointments to the office of sheriff on or after that date.