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Short Title: Expand Expunction Eligibility.

(Public)

Sponsors:

Referred to:

March 16, 2021

A BILL TO BE ENTITLED

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.



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1 (a1) An offense involving impaired driving as defined in G.S. 20-4.01(24a) is not eligible
2 for expunction.

3 (b) Notwithstanding any other provision of law, if the person is convicted of more than
4 one nonviolent felony or nonviolent misdemeanor in the same session of court, then the multiple
5 nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent
6 felony or nonviolent misdemeanor conviction under this section, and the expunction order issued
7 under this section shall provide that the multiple nonviolent felony convictions or nonviolent
8 misdemeanor convictions shall be expunged from the person's record in accordance with this
9 section.

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

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

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

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

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

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

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

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

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

44 (1) An affidavit by the petitioner that the petitioner is of good moral character and
45 has not been convicted of any other felony or misdemeanor, other than a traffic
46 violation, under the laws of the United States or the laws of this State or any
47 other state during the applicable five-year, seven-year, ~~or 10-year~~ 10-year, or
48 20-year waiting period set forth in subsection (c) of this section.

49 (2) Verified affidavits of two persons who are not related to the petitioner or to
50 each other by blood or marriage, that they know the character and reputation

1 of the petitioner in the community in which the petitioner lives and that the
2 petitioner's character and reputation are good.

3 (3) A statement that the petition is a motion in the cause in the case wherein the
4 petitioner was convicted.

5 (4) An application on a form approved by the Administrative Office of the Courts
6 requesting and authorizing a name-based State and national criminal history
7 record check by the Department of Public Safety using any information
8 required by the Administrative Office of the Courts to identify the individual,
9 a search by the Department of Public Safety for any outstanding warrants on
10 pending criminal cases, and a search of the confidential record of expunctions
11 maintained by the Administrative Office of the Courts. The application shall
12 be filed with the clerk of superior court. The clerk of superior court shall
13 forward the application to the Department of Public Safety and to the
14 Administrative Office of the Courts, which shall conduct the searches and
15 report their findings to the court.

16 (5) An affidavit by the petitioner that no restitution orders or civil judgments
17 representing amounts ordered for restitution entered against the petitioner are
18 outstanding.

19 (6) An affidavit by the petitioner providing information on any additional
20 petitions the petitioner has submitted, or intends to submit, in other counties
21 pursuant to subsection (c4) of this section seeking expunction of additional
22 convictions.

23 (7) An acknowledgement by the petitioner that, except as provided in subsection
24 (c5) of this section, the expunction of one nonviolent misdemeanor prior to
25 the seven-year waiting period or one nonviolent felony prior to the 20-year
26 waiting period will preclude the petitioner from expunging additional
27 nonviolent misdemeanors or nonviolent felonies that might otherwise be
28 eligible for expunction pursuant to sub-subdivision b. of subdivision (1) of
29 subsection (c) of this section or sub-subdivision b. of subdivision (2) of
30 subsection (c) of this section.

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

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

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

49 (1) One of the following:

- 1 a. The petitioner has not previously been granted an expunction under
 2 this section ~~prior to the date of any offense the current petition requests~~
 3 ~~be expunged for one or more nonviolent misdemeanors.~~
 4 b. Any previous expunction granted to the petitioner under this section
 5 for one or more nonviolent misdemeanors was granted pursuant to a
 6 petition filed prior to December 1, 2021.
- 7 (2) The petitioner is of good moral character.
 8 (3) The petitioner has no outstanding warrants or pending criminal cases.
 9 (4) The petitioner has no other felony or misdemeanor convictions, other than a
 10 traffic violation not listed in the petition for expunction, during the applicable
 11 five-year or seven-year waiting period set forth in subsection (c) of this
 12 section.
 13 (5) The petitioner has no outstanding restitution orders or civil judgments
 14 representing amounts ordered for restitution entered against the petitioner.
 15 (6) The petitioner meets one of the following criteria:
 16 a. For a petition for expunction of one nonviolent misdemeanor, the
 17 petitioner has no convictions for any other felony or misdemeanor,
 18 other than a traffic offense.
 19 b. For a petition for expunction of more than one nonviolent
 20 misdemeanor, the petitioner has no convictions for a misdemeanor or
 21 felony that is listed as an exception to the terms "nonviolent
 22 misdemeanor" or "nonviolent felony" as provided in subsection (a) of
 23 this section.
 24 (7) The petitioner was convicted of an offense or offenses eligible for expunction
 25 under this section.
 26 (8) The petitioner has completed the applicable five-year or seven-year waiting
 27 period set forth in subsection (c) of this section.
- 28 If the court denies the petition, the order shall include a finding as to the reason for the denial.
 29 (c3) The court, after hearing a petition for expunction of one or up to three nonviolent
 30 ~~felony, felonies,~~ may order that the petitioner be restored, in the contemplation of the law, to the
 31 status the petitioner occupied before the arrest or indictment or information, except as provided
 32 in G.S. 15A-151.5, if the court finds all of the following:
- 33 (1) One of the following:
 34 a. The petitioner has not previously been granted an expunction under
 35 this section ~~prior to the date of any offense the current petition requests~~
 36 ~~be expunged for one or more nonviolent felonies.~~
 37 b. Any previous expunction granted to the petitioner under this section
 38 for a felony was granted pursuant to a petition filed prior to December
 39 1, 2021.
- 40 (2) The petitioner is of good moral character.
 41 (3) The petitioner has no outstanding warrants or pending criminal cases.
 42 (4) ~~The~~ If the petition is for the expunction of one felony, the petitioner has no
 43 misdemeanor convictions, other than a traffic violation not listed in the
 44 petition for expunction, in the five years preceding the petition, and no other
 45 ~~felony or misdemeanor convictions, other than a traffic violation not listed in~~
 46 ~~the petition for expunction, convictions~~ during the applicable 10-year waiting
 47 period set forth in subsection (c) of this section.
 48 (4a) If the petition is for the expunction of two or three felonies, or if the petitioner
 49 has filed petitions in more than one county pursuant to subsection (c4) of this
 50 section, the petitioner has no misdemeanor convictions other than a traffic
 51 violation not listed in the petition for expunction in the five years preceding

1 the petition, and no other felony convictions during the applicable 20-year
2 waiting period set forth in subsection (c) of this section.

3 (4b) If the petition is for the expunction of two or three felonies, if the petitioner
4 has filed petitions in more than one county pursuant to subsection (c4) of this
5 section, or if the petition is filed pursuant to subsection (c5) of this section,
6 the felony offenses were committed within the same 24-month period.

7 (5) The petitioner has no outstanding restitution orders or civil judgments
8 representing amounts ordered for restitution entered against the petitioner.

9 (6) The petitioner has no convictions for a misdemeanor that is listed as an
10 exception to the term "nonviolent misdemeanor" as provided in subsection (a)
11 of this section or any other felony offense.

12 (7) The petitioner was convicted of an offense eligible for expunction under this
13 section.

14 (8) The petitioner has completed the applicable 10-year or 20-year waiting period
15 set forth in subsection (c) of this section.

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

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

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

31 "

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

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

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

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

47 ...

48 (8) For disclosure of records of previous dismissal pursuant to conditional
49 discharge, upon joint request of the district attorney and the defendant in a
50 pending proceeding for the purpose of determining eligibility for a conditional
51 discharge. Any report disclosed in response to the joint request shall be

1 delivered only to the clerk of superior court of the county in which the matter
2 is pending. Upon receipt of the report from the Administrative Office of the
3 Courts, the clerk shall provide a copy to the district attorney and to the
4 defendant. The clerk shall otherwise maintain the information as a confidential
5 record in the court file for the case."

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

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

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