

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2021

S

2

SENATE BILL 301
Judiciary Committee Substitute Adopted 3/23/21

Short Title: Expand Expunction Eligibility.

(Public)

Sponsors:

Referred to:

March 16, 2021

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW FOR THE EXPUNCTION OF UP TO TWO NONVIOLENT
3 FELONIES, TO EXPAND THE DEFINITION FOR THE TERM "NONVIOLENT
4 FELONY," AND TO ALLOW THE PUBLIC DEFENDER OR PRIVATE COUNSEL TO
5 FILE A PETITION FOR EXPUNCTION ON BEHALF OF A PERSON ELIGIBLE TO
6 EXPUNGE CERTAIN OFFENSES COMMITTED UNDER THE AGE OF EIGHTEEN.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 15A-145.5 reads as rewritten:

9 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

10 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent
11 felony" means any misdemeanor or felony except the following:

- 12 (1) A Class A through G felony or a Class A1 misdemeanor.
- 13 (2) An offense that includes assault as an essential element of the offense.
- 14 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the
15 General Statutes, whether or not the person is currently required to register.
- 16 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),
17 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,
18 14-277.3, 14-277.3A, 14-321.1.
- 19 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
20 involves methamphetamines, heroin, or possession with intent to sell or
21 deliver or sell and deliver cocaine.
- 22 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
23 which punishment was determined pursuant to G.S. 14-3(c).
- 24 (7) An offense under G.S. 14-401.16.
- 25 (7a) An offense under ~~G.S. 14-54(a), 14-54(a1), or 14-56.~~ G.S. 14-54(a) or
26 G.S. 14-54(a1).
- 27 (8) Any felony offense in which a commercial motor vehicle was used in the
28 commission of the offense.
- 29 ~~(8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).~~
- 30 (9) Any offense that is an attempt to commit an offense described in subdivisions
31 (1) through ~~(8a)~~ (8) of this subsection.

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

34 (b) Notwithstanding any other provision of law, if the person is convicted of more than
35 one nonviolent felony or nonviolent misdemeanor in the same session of court, then the multiple
36 nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent



1 felony or nonviolent misdemeanor conviction under this section, and the expunction order issued
2 under this section shall provide that the multiple nonviolent felony convictions or nonviolent
3 misdemeanor convictions shall be expunged from the person's record in accordance with this
4 section.

5 (c) A person may file a petition, in the court of the county where the person was
6 convicted, for expunction of one or more nonviolent misdemeanor convictions or ~~one~~ up to two
7 nonviolent felony ~~conviction-convictions~~ from the person's criminal record. The petition shall
8 not be filed earlier than one of the following:

- 9 (1) For expunction of one nonviolent misdemeanor, five years after the date of
10 the conviction or when any active sentence, period of probation, or
11 post-release supervision has been served, whichever occurs later.
- 12 (2) For expunction of more than one nonviolent misdemeanor, seven years after
13 the date of the person's last conviction, other than a traffic offense not listed
14 in the petition for expunction, or seven years after any active sentence, period
15 of probation, or post-release supervision has been served, whichever occurs
16 later.
- 17 (3) For expunction of one nonviolent felony, 10 years after the date of the
18 conviction or 10 years after any active sentence, period of probation, or
19 post-release ~~supervision-supervision~~, related to the conviction listed in the
20 petition, has been served, whichever occurs later.
- 21 (4) For expunction of two nonviolent felonies, 20 years after the date of the most
22 recent conviction listed in the petition, or 20 years after any active sentence,
23 period of probation, or post-release supervision, related to a conviction listed
24 in the petition, has been served, whichever occurs later.

25 A person previously granted an expunction under this section is not eligible for relief under
26 this section for any offense committed after the date of the previous order for expunction.

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

- 29 (1) An affidavit by the petitioner that the petitioner is of good moral character and
30 has not been convicted of any other felony or misdemeanor, other than a traffic
31 violation, under the laws of the United States or the laws of this State or any
32 other state during the applicable five-year, seven-year, ~~or 10-year~~ 10-year, or
33 20-year waiting period set forth in subsection (c) of this section.

34 ...

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

- 39 (1) The petitioner has not been granted an expunction under this section prior to
40 the date of any offense the current petition requests be expunged.
- 41 (2) The petitioner is of good moral character.
- 42 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 43 (4) The petitioner has no misdemeanor convictions, other than a traffic violation
44 not listed in the petition for expunction, in the five years preceding the
45 petition, and no other felony or misdemeanor convictions, other than a traffic
46 violation not listed in the petition for expunction, convictions not listed in the
47 petition during the applicable 10-year or 20-year waiting period set forth in
48 subsection (c) of this section.
- 49 (4a) For a petition for expunction of two nonviolent felonies, the two nonviolent
50 felony convictions were obtained within the same 24-month period.

- 1 (5) The petitioner has no outstanding restitution orders or civil judgments
2 representing amounts ordered for restitution entered against the petitioner.
3 (6) The petitioner has no convictions for a misdemeanor that is listed as an
4 exception to the term "nonviolent misdemeanor" as provided in subsection (a)
5 of this section or any other felony offense.
6 (7) The petitioner was convicted of an offense eligible for expunction under this
7 section.
8 (8) The petitioner has completed the applicable 10-year or 20-year waiting period
9 set forth in subsection (c) of this section.

10 If the court denies the petition, the order shall include a finding as to the reason for the denial.
11"

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

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

22 **SECTION 3.** This act becomes effective December 1, 2021, and applies to petitions
23 filed on or after that date.