

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

H.B. 237  
Mar 1, 2017  
HOUSE PRINCIPAL CLERK

H

D

HOUSE BILL DRH40142-Saf-8 (02/02)

Short Title: Amend Expunction.

(Public)

Sponsors: Representatives Floyd, C. Graham, Duane Hall, and Hanes (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO ALLOW A ONE-TIME EXPUNCTION OF MULTIPLE CRIMINAL OFFENSES.

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.
- (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) of this subsection.

(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 and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, 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.~~



\* D R H 4 0 1 4 2 - S A F - 8 \*

1 (c) A person may file a petition, in the court where the person was most recently  
2 convicted, for expunction of ~~a nonviolent misdemeanor or and nonviolent felony conviction~~  
3 convictions from the person's criminal record if the person has no other misdemeanor or felony  
4 ~~convictions, convictions that are excluded from expunction pursuant to this section,~~ other than a  
5 traffic violation. The petition shall not be filed earlier than 15 years after the date of the most  
6 recent conviction or when ~~any all active sentence, period sentences, periods~~ of probation, and  
7 post-release supervision ~~has have~~ been served, whichever occurs later. The petition shall contain,  
8 but not be limited to, the following:

- 9 (1) An affidavit by the petitioner that the petitioner has been of good moral  
10 character since the most recent date of conviction for ~~the a~~ nonviolent  
11 misdemeanor or nonviolent felony and has not been convicted of any other  
12 felony or ~~misdemeanor, misdemeanor that is excluded from expunction~~  
13 pursuant to this section, other than a traffic violation, under the laws of the  
14 United States or the laws of this State or any other state.
- 15 (2) Verified affidavits of two persons who are not related to the petitioner or to  
16 each other by blood or marriage, that they know the character and reputation of  
17 the petitioner in the community in which the petitioner lives and that the  
18 petitioner's character and reputation are good.
- 19 (3) A statement that the petition is a motion in the cause in the case wherein the  
20 petitioner was most recently convicted.
- 21 (4) An application on a form approved by the Administrative Office of the Courts  
22 requesting and authorizing a name-based State and national criminal history  
23 record check by the Department of Public Safety using any information  
24 required by the Administrative Office of the Courts to identify the individual, a  
25 search by the Department of Public Safety for any outstanding warrants on  
26 pending criminal cases, and a search of the confidential record of expunctions  
27 maintained by the Administrative Office of the Courts. The application shall be  
28 forwarded to the Department of Public Safety and to the Administrative Office  
29 of the Courts, which shall conduct the searches and report their findings to the  
30 court.
- 31 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
32 representing amounts ordered for restitution entered against the petitioner are  
33 outstanding.

34 Upon filing of the petition, the petition shall be served upon the district attorney of the court  
35 wherein the most recent case was tried resulting in conviction. The district attorney shall have 30  
36 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the  
37 hearing of the petition. Upon good cause shown, the court may grant the district attorney an  
38 additional 30 days to file objection to the petition. The district attorney shall make his or her best  
39 efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the  
40 date of the hearing.

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

46 If the court, after hearing, finds that the petitioner has not previously been granted an  
47 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or ~~15A-145.4;~~  
48 15A-145.4, or that any previous expunction received under any of those sections occurred prior to  
49 December 1, 2017; the petitioner has remained of good moral character; the petitioner has no  
50 outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor  
51 convictions that are excluded from expunction pursuant to this section other than a traffic

1 violation; the petitioner has no outstanding restitution orders or civil judgments representing  
2 amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of  
3 ~~an offense~~ ~~offenses~~ eligible for expunction under this section and was convicted of, and completed  
4 any sentence received for, the nonviolent ~~misdemeanor or misdemeanors~~ and nonviolent ~~felony~~  
5 felonies at least 15 years prior to the filing of the petition, it may order that such person be  
6 restored, in the contemplation of the law, to the status the person occupied before ~~such arrest or~~  
7 ~~indictment or information.~~ those arrests, indictments, or informations. If the court denies the  
8 petition, the order shall include a finding as to the reason for the denial.

9 (d) No person as to whom an order has been entered pursuant to subsection (c) of this  
10 section shall be held thereafter under any provision of any law to be guilty of perjury or otherwise  
11 giving a false statement by reason of that person's failure to recite or acknowledge the arrest,  
12 indictment, information, trial, or conviction. Persons pursuing certification under the provisions of  
13 Chapter 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the  
14 certifying Commission, regardless of whether or not the convictions were expunged pursuant to  
15 the provisions of this section.

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

18 (e) The court shall also order that the ~~conviction convictions~~ be expunged from the records  
19 of the court and direct all law enforcement agencies bearing record of the same to expunge their  
20 records of the ~~conviction convictions~~. The clerk shall notify State and local agencies of the court's  
21 order, as provided in G.S. 15A-150.

22 (f) Any other applicable State or local government agency shall expunge from its records  
23 entries made as a result of the ~~conviction convictions~~ ordered expunged under this section upon  
24 receipt from the petitioner of an order entered pursuant to this section. The agency shall also  
25 vacate any administrative actions taken against a person whose record is expunged under this  
26 section as a result of the charges or convictions expunged. A person whose administrative action  
27 has been vacated by an occupational licensing board pursuant to an expunction under this section  
28 may then reapply for licensure and must satisfy the board's then current education and preliminary  
29 licensing requirements in order to obtain licensure. This subsection shall not apply to the  
30 Department of Justice for DNA records and samples stored in the State DNA Database and the  
31 State DNA Databank.

32 (g) A person who files a petition for expunction of a criminal record under this section  
33 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time  
34 the petition is filed. Fees collected under this subsection shall be deposited in the General Fund.  
35 This subsection does not apply to petitions filed by an indigent."

36 **SECTION 2.** This act becomes effective December 1, 2017, and applies to petitions  
37 filed on or after that date.