

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2023

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SENATE BILL DRS35047-ML-24A

Short Title: Removing Barriers to Work. (Public)

Sponsors: Senators Britt, Lazzara, and Mohammed (Primary Sponsors).

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO ALLOW FOR EXPUNCTION OF THE OFFENSES OF BREAKING OR
3 ENTERING OF A BUILDING WITH INTENT TO COMMIT A FELONY OR LARCENY
4 AND POSSESSION OF COCAINE WITH INTENT TO SELL OR DELIVER OR SELL
5 AND DELIVER, TO PROHIBIT EXPUNCTION OF A FELONY OFFENSE UNDER
6 CHAPTER 90 OF THE GENERAL STATUTES INVOLVING FENTANYL, AND TO
7 AMEND THE CONDITIONS THAT RESULT IN A PETITION FOR EXPUNCTION
8 BEING DENIED.

9 The General Assembly of North Carolina enacts:

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

11 "**§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

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

- 14 (1) A Class A through G felony or a Class A1 misdemeanor.
- 15 (2) An offense that includes assault as an essential element of the offense.
- 16 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the
17 General Statutes, whether or not the person is currently required to register.
- 18 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b),
19 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18,
20 14-277.3, 14-277.3A, 14-321.1.
- 21 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
22 involves methamphetamines, heroin, or ~~possession with intent to sell or~~
23 ~~deliver or sell and deliver cocaine-fentanyl.~~
- 24 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
25 which punishment was determined pursuant to G.S. 14-3(c).
- 26 (7) An offense under G.S. 14-401.16.
- 27 (7a) An offense under ~~G.S. 14-54(a)~~ or G.S. 14-54(a1).
- 28 (8) Any felony offense in which a commercial motor vehicle was used in the
29 commission of the offense.
- 30 (8a) Repealed by Session Laws 2021-118, s. 1, effective December 1, 2021, and
31 applicable to petitions filed on or after that date.
- 32 (9) Any offense that is an attempt to commit an offense described in subdivisions
33 (1) through (8) of this subsection.

34 ...

35 (c) A person may file a petition, in the court of the county where the person was
36 convicted.



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- 1 (1) For expunction of one or more nonviolent misdemeanor convictions, the
2 petition shall not be filed earlier than one of the following:
3 a. For expunction of one nonviolent misdemeanor, five years after the
4 date of the conviction or when any active sentence, period of
5 probation, or post-release supervision has been served, whichever
6 occurs later.
7 b. For expunction of more than one nonviolent misdemeanor, seven years
8 after the date of the person's last conviction, other than a traffic offense
9 not listed in the petition for expunction, or seven years after any active
10 sentence, period of probation, or post-release supervision has been
11 served, whichever occurs later.
- 12 (2) For expunction of up to three nonviolent felony convictions, the petition shall
13 not be filed earlier than one of the following:
14 a. For expunction of one nonviolent ~~felony~~, felony not subject to the
15 waiting period set forth in sub-subdivision a1. of this subdivision, 10
16 years after the date of the conviction or 10 years after any active
17 sentence, period of probation, or post-release supervision, related to
18 the conviction listed in the petition, has been served, whichever occurs
19 later.
20 a1. For expunction of one nonviolent felony under G.S. 14-54(a) or (a1),
21 or one nonviolent felony involving possession with intent to sell or
22 deliver or sell and deliver cocaine, 15 years after the date of the
23 conviction or 15 years after any active sentence, period of probation,
24 or post-release supervision, related to the conviction listed in the
25 petition, has been served, whichever occurs later.
26 b. For expunction of two or three nonviolent felonies, 20 years after the
27 date of the most recent conviction listed in the petition, or 20 years
28 after any active sentence, period of probation, or post-release
29 supervision, related to a conviction listed in the petition, has been
30 served, whichever occurs later.

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

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

- 40 (1) An affidavit by the petitioner that the petitioner is of good moral character and
41 one of the following statements:
42 a. If the petition is for the expunction of one or more nonviolent
43 misdemeanors, that the petitioner has not been convicted of any other
44 felony or misdemeanor, other than a traffic violation, under the laws
45 of the United States or the laws of this State or any other state during
46 the applicable ~~five-year or seven-year~~ waiting period set forth in
47 subsection (c) of this section.
48 b. If the petition is for the expunction of one or up to three nonviolent
49 felonies, that the petitioner has not been convicted under the laws of
50 the United States or the laws of this State or any other state of any
51 misdemeanor, other than a traffic violation, in the five years preceding

1 the petition, or any felony during the applicable ~~10-year or 20-year~~
2 waiting period set forth in subsection (c) of this section.

- 3 (2) Verified affidavits of two persons who are not related to the petitioner or to
4 each other by blood or marriage, that they know the character and reputation
5 of the petitioner in the community in which the petitioner lives and that the
6 petitioner's character and reputation are good.
- 7 (3) A statement that the petition is a motion in the cause in the case wherein the
8 petitioner was convicted.
- 9 (4) An application on a form approved by the Administrative Office of the Courts
10 requesting and authorizing a name-based State and national criminal history
11 record check by the Department of Public Safety using any information
12 required by the Administrative Office of the Courts to identify the individual,
13 a search by the Department of Public Safety for any outstanding warrants on
14 pending criminal cases, and a search of the confidential record of expunctions
15 maintained by the Administrative Office of the Courts. The application shall
16 be filed with the clerk of superior court. The clerk of superior court shall
17 forward the application to the Department of Public Safety and to the
18 Administrative Office of the Courts, which shall conduct the searches and
19 report their findings to the court.
- 20 (5) An affidavit by the petitioner that no restitution orders or civil judgments
21 representing amounts ordered for restitution entered against the petitioner are
22 outstanding.
- 23 (6) An affidavit by the petitioner providing information on any additional
24 petitions the petitioner has submitted, or intends to submit, in other counties
25 pursuant to subsection (c4) of this section seeking expunction of additional
26 convictions.
- 27 (7) An acknowledgement by the petitioner that, except as provided in subsection
28 (c5) of this section, the expunction of one nonviolent misdemeanor prior to
29 the seven-year waiting period or one nonviolent felony prior to the 20-year
30 waiting period will preclude the petitioner from expunging additional
31 nonviolent misdemeanors or nonviolent felonies that might otherwise be
32 eligible for expunction pursuant to sub-subdivision b. of subdivision (1) of
33 subsection (c) of this section or sub-subdivision b. of subdivision (2) of
34 subsection (c) of this section.

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

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

49 (c2) The court, after hearing a petition for expunction of one or more nonviolent
50 misdemeanors, shall order that the petitioner be restored, in the contemplation of the law, to the

1 status the petitioner occupied before the arrest or indictment or information, except as provided
2 in G.S. 15A-151.5, if the court finds all of the following:

- 3 (1) One of the following:
 - 4 a. The petitioner has not previously been granted an expunction under
5 this section for one or more nonviolent misdemeanors.
 - 6 b. Any previous expunction granted to the petitioner under this section
7 for one or more nonviolent misdemeanors was granted pursuant to a
8 petition filed prior to December 1, 2021.
- 9 (2) The petitioner is of good moral character.
- 10 (3) The petitioner has no outstanding warrants or pending criminal ~~cases-cases~~, is
11 not under indictment, and no finding of probable cause exists against the
12 defendant for a felony, in any federal court or state court in the United States.
- 13 (3a) The petitioner is not free on bond or personal recognizance pending trial,
14 appeal, or sentencing in any federal court or state court in the United States
15 for a crime which would prohibit the person from having his or her petition
16 for expunction under this section granted.
- 17 (4) The petitioner has no other felony or misdemeanor convictions, other than a
18 traffic violation not listed in the petition for expunction, during the applicable
19 ~~five-year or seven-year~~ waiting period set forth in subsection (c) of this
20 section.
- 21 (5) The petitioner has no outstanding restitution orders or civil judgments
22 representing amounts ordered for restitution entered against the petitioner.
- 23 (6) The petitioner has no convictions for a misdemeanor or felony that is listed as
24 an exception to the terms "nonviolent misdemeanor" or "nonviolent felony"
25 as provided in subsection (a) of this section.
- 26 (7) The petitioner was convicted of an offense or offenses eligible for expunction
27 under this section.
- 28 (8) The petitioner has completed the applicable ~~five-year or seven-year~~ waiting
29 period set forth in subsection (c) of this section.

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

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

- 35 (1) One of the following:
 - 36 a. The petitioner has not previously been granted an expunction under
37 this section for one or more nonviolent felonies.
 - 38 b. Any previous expunction granted to the petitioner under this section
39 for a felony was granted pursuant to a petition filed prior to December
40 1, 2021.
- 41 (2) The petitioner is of good moral character.
- 42 (3) The petitioner has no outstanding warrants or pending criminal ~~cases-cases~~, is
43 not under indictment, and no finding of probable cause exists against the
44 defendant for a felony, in any federal court or state court in the United States.
- 45 (3a) The petitioner is not free on bond or personal recognizance pending trial,
46 appeal, or sentencing in any federal court or state court in the United States
47 for a crime which would prohibit the person from having his or her petition
48 for expunction under this section granted.
- 49 (4) If the petition is for the expunction of one felony, the petitioner has no
50 misdemeanor convictions, other than a traffic violation not listed in the
51 petition for expunction, in the five years preceding the petition, and no other

- 1 felony convictions during the applicable ~~10-year~~ waiting period set forth in
- 2 subsection (c) of this section.
- 3 (4a) If the petition is for the expunction of two or three felonies, or if the petitioner
- 4 has filed petitions in more than one county pursuant to subsection (c4) of this
- 5 section, the petitioner has no misdemeanor convictions other than a traffic
- 6 violation not listed in the petition for expunction in the five years preceding
- 7 the petition, and no other felony convictions during the applicable ~~20-year~~
- 8 waiting period set forth in subsection (c) of this section.
- 9 (4b) If the petition is for the expunction of two or three felonies, if the petitioner
- 10 has filed petitions in more than one county pursuant to subsection (c4) of this
- 11 section, or if the petition is filed pursuant to subsection (c5) of this section,
- 12 the felony offenses were committed within the same 24-month period.
- 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 has no convictions for a misdemeanor that is listed as an
- 16 exception to the term "nonviolent misdemeanor" as provided in subsection (a)
- 17 of this section or any other felony offense.
- 18 (7) The petitioner was convicted of an offense eligible for expunction under this
- 19 section.
- 20 (8) The petitioner has completed the applicable ~~10-year or 20-year~~ waiting period
- 21 set forth in subsection (c) of this section.

22 If the court denies the petition, the order shall include a finding as to the reason for the denial.
23"

24 **SECTION 2.** This act becomes effective December 1, 2023, and applies to petitions
25 filed on or after that date.