

§ 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, 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.

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

- (1) For expunction of one nonviolent misdemeanor, five years after the date of the conviction or when any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.
- (2) For expunction of more than one nonviolent misdemeanor, seven years after the date of the person's last conviction, other than a traffic offense not listed in the petition for expunction, or seven years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.
- (3) For expunction of one nonviolent felony, 10 years after the date of the conviction or 10 years after any active sentence, period of probation, or post-release supervision has been served, whichever occurs later.

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

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

- (1) An affidavit by the petitioner that the petitioner is of good moral character and has not been convicted of any other felony or misdemeanor, other than a traffic

violation, under the laws of the United States or the laws of this State or any other state during the applicable five-year, seven-year, or 10-year waiting period set forth in subsection (c) of this section.

- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives and that the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

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

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

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

- (1) The petitioner has not been granted an expunction under this section prior to the date of any offense the current petition requests be expunged.
- (2) The petitioner is of good moral character.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, during the applicable five-year or seven-year waiting period set forth in subsection (c) of this section.

- (5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (6) The petitioner meets one of the following criteria:
 - a. For a petition for expunction of one nonviolent misdemeanor, the petitioner has no convictions for any other felony or misdemeanor, other than a traffic offense.
 - b. For a petition for expunction of more than one nonviolent misdemeanor, the petitioner has no convictions for a misdemeanor or felony that is listed as an exception to the terms "nonviolent misdemeanor" or "nonviolent felony" as provided in subsection (a) of this section.
- (7) The petitioner was convicted of an offense or offenses eligible for expunction under this section.
- (8) The petitioner has completed the applicable five-year or seven-year waiting period set forth in subsection (c) of this section.

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

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

- (1) The petitioner has not been granted an expunction under this section prior to the date of any offense the current petition requests be expunged.
- (2) The petitioner is of good moral character.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no other felony or misdemeanor convictions, other than a traffic violation not listed in the petition for expunction, during the applicable 10-year waiting period set forth in subsection (c) of this section.
- (5) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (6) The petitioner has no convictions for a misdemeanor that is listed as an exception to the term "nonviolent misdemeanor" as provided in subsection (a) of this section or any other felony offense.
- (7) The petitioner was convicted of an offense eligible for expunction under this section.
- (8) The petitioner has completed the 10-year waiting period set forth in subsection (c) of this section.

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

(d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

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

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

(e) The court shall also order that the conviction or convictions be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to

expunge their records of the conviction. The clerk shall notify State and local agencies of the court's order, as provided in G.S. 15A-150.

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

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This subsection does not apply to petitions filed by an indigent. (2012-191, s. 1; 2013-53, s. 2; 2013-410, s. 4; 2014-100, s. 17.1(o); 2014-119, ss. 1(a), 11(a); 2015-150, s. 4; 2015-181, s. 43; 2017-195, s. 1; 2020-35, s. 4(a).)