

Withdrawn



NORTH CAROLINA GENERAL ASSEMBLY
AMENDMENT
Senate Bill 445

AMENDMENT NO. A1
(to be filled in by
Principal Clerk)

S445-ASA-74 [v.1]

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Amends Title [YES]
Third Edition

Date _____, 2017

Representative Floyd

1 moves to amend the bill on page 1, line 3
2 by inserting the following at the beginning of that line:
3 "ALLOW A ONE-TIME EXPUNCTION OF MULTIPLE CRIMINAL OFFENSES, TO";
4

5 And on page 12, line 44 through page 15, line 11
6 by rewriting those lines to read:

7 **""§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

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

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

30 (b) ~~Notwithstanding any other provision of law, if the person is convicted of more than~~
31 ~~one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the~~
32 ~~nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person~~



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1 ~~had already been served with criminal process for the commission of a nonviolent felony or~~
2 ~~nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor~~
3 ~~convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction~~
4 ~~under this section, and the expunction order issued under this section shall provide that the~~
5 ~~multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be~~
6 ~~expunged from the person's record in accordance with this section.~~

7 (c) A person may file a petition, in the court of the county where the person was most
8 recently convicted, for expunction of ~~a nonviolent misdemeanor or and nonviolent felony~~
9 ~~conviction convictions~~ from the person's criminal record if the person has no other
10 misdemeanor or felony ~~convictions~~, convictions that are excluded from expunction pursuant to
11 this section, other than a traffic violation. The petition shall not be filed earlier than 15-10 years
12 after the date of the most recent conviction for a nonviolent felony or five years for a
13 nonviolent misdemeanor or when ~~any all~~ active sentence, period sentences, periods of
14 probation, and post-release supervision has have been served, whichever occurs later. The
15 petition shall contain, but not be limited to, the following:

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

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1 Upon filing of the petition, the petition shall be served upon the district attorney of the court
2 wherein the most recent case was tried resulting in conviction. The district attorney shall have
3 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date
4 of the hearing of the petition. Upon good cause shown, the court may grant the district attorney
5 an additional 30 days to file objection to the petition. The district attorney shall make his or her
6 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
7 to the date of the hearing.

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

13 If the court, after hearing, finds that the petitioner has not previously been granted an
14 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
15 ~~15A-145.4; 15A-145.4~~, or that any previous expunction received under any of those sections
16 occurred prior to December 1, 2017; the petitioner has remained of good moral character; the
17 petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other
18 felony or misdemeanor convictions that are excluded from expunction pursuant to this section
19 other than a traffic violation; the petitioner has no outstanding restitution orders or civil
20 judgments representing amounts ordered for restitution entered against the petitioner; and the
21 petitioner was convicted of ~~an offense~~ offenses eligible for expunction under this section and
22 was convicted of, and completed any sentence received for, the ~~nonviolent misdemeanor or~~
23 ~~nonviolent felony~~ felonies at least ~~15-10~~ years prior to the filing of the ~~petition~~ petition or the
24 nonviolent misdemeanors at least five years prior to the filing of the petition, it may order that
25 such person be restored, in the contemplation of the law, to the status the person occupied
26 before ~~such arrest or indictment or information~~ those arrests, indictments, or informations,
27 except as provided in G.S. 15A-151.5. If the court denies the petition, the order shall include a
28 finding as to the reason for the denial.

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

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

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

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

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

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

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

SIGNED _____
Amendment Sponsor

SIGNED _____
Committee Chair if Senate Committee Amendment

ADOPTED _____ FAILED _____ TABLED _____