

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 387

Short Title: Amend Certain Criminal Provisions.-AB (Public)

Sponsors: Representatives Malone and Stevens (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee C.

March 21, 2013

A BILL TO BE ENTITLED

AN ACT TO AMEND VARIOUS CRIMINAL LAWS REGARDING CONCEALED
HANDGUN PERMITS, EXPUNCTIONS, DISPOSITION OF FIREARMS, CRIME
VICTIMS RIGHTS, AND OFFENSES THAT MAY BE WAIVED.

The General Assembly of North Carolina enacts:

SECTION 1.(a) G.S. 14-415.14(a) reads as rewritten:

"(a) The sheriff shall make permit applications readily available at the office of the sheriff or at other public offices in the sheriff's jurisdiction. The permit application shall be in triplicate, in a form to be prescribed by the ~~Administrative Office of the Courts,~~ State Bureau of Investigation, and shall include the following information with regard to the applicant: name, address, physical description, signature, date of birth, social security number, military status, law enforcement status, and the drivers license number or State identification card number of the applicant if used for identification in applying for the permit."

SECTION 1.(b) G.S. 14-415.17 reads as rewritten:

"§ 14-415.17. Permit; sheriff to retain and make available to law enforcement agencies a list of permittees.

The permit shall be in a certificate form, as prescribed by the ~~Administrative Office of the Courts,~~ State Bureau of Investigation, that is approximately the size of a North Carolina drivers license. It shall bear the signature, name, address, date of birth, and the drivers license identification number used in applying for the permit. The sheriff shall maintain a listing, including the identifying information, of those persons who are issued a permit. The permit information shall be available upon request to all State and local law enforcement agencies.

Within five days of the date a permit is issued, the sheriff shall send a copy of the permit to the State Bureau of Investigation. The State Bureau of Investigation shall make this information available to law enforcement officers and clerks of court on a statewide system."

SECTION 2.(a) G.S. 15A-150 reads as rewritten:

"(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

- (1) Persons granted an expunction under this Article.
- (2) Persons granted a conditional discharge under G.S. 14-50.29.
- (3) Persons granted a conditional discharge under G.S. 90-96 or G.S. 90-113.14.
- (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.

(b) Notification to Other State and Local Agencies. – The clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to



1 a person named in subsection (a) of this section to all of the agencies listed in this subsection.
2 An agency receiving an order under this subsection shall expunge from its records all entries
3 made as a result of the charge or conviction ordered expunged, except as provided in
4 G.S. 15A-151.

5 (1) The sheriff, chief of police, or other arresting agency.

6 (2) When applicable, the Division of Motor Vehicles and the Division of Adult
7 Correction of the Department of Public Safety.

8 (3) Any State or local agency identified by the petition as bearing record of the
9 offense that has been expunged.

10 (4) The State Bureau of Investigation (SBI).

11 (c) ~~Notification to SBI and FBI. — An arresting agency that receives a certified copy of~~
12 ~~an order under this section shall forward a copy of the order with the form supplied by the State~~
13 ~~Bureau of Investigation to the State Bureau of Investigation.~~ The State Bureau of Investigation
14 shall forward the order received under this section to the Federal Bureau of Investigation.

15 (d) Notification to Private Entities. — A State agency that receives a certified copy of an
16 order under this section shall notify any private entity with which it has a licensing agreement
17 for bulk extracts of data from the agency criminal record database to delete the record in
18 question. The private entity shall notify any other entity to which it subsequently provides in a
19 bulk extract data from the agency criminal database to delete the record in question from its
20 database."

21 **SECTION 2.(b)** This section becomes effective December 1, 2013, and applies to
22 petitions filed on or after that date.

23 **SECTION 3.** Section 2 1/2 of Chapter 954 of the 1965 Session Laws is repealed.

24 **SECTION 4.(a)** G.S. 15A-830(a)(7) reads as rewritten:

25 "(7) Victim. — A person against whom there is probable cause to believe one of
26 the following crimes was committed:

27 a. A Class A, B1, B2, C, D, or E felony.

28 b. A Class F felony if it is a violation of one of the following:
29 G.S. 14-16.6(b); 14-16.6(c); 14-18; 14-32.1(e); 14-32.2(b)(3);
30 14-32.3(a); 14-32.4; 14-34.2; 14-34.6(c); 14-41; 14-43.3; 14-43.11;
31 14-190.17; 14-190.19; 14-202.1; 14-277.3A; 14-288.9; 20-138.5; or
32 former G.S. 14-277.3.

33 c. A Class G felony if it is a violation of one of the following:
34 G.S. 14-32.3(b); 14-51; 14-58; 14-87.1; or 20-141.4.

35 d. A Class H felony if it is a violation of one of the following:
36 G.S. 14-32.3(a); 14-32.3(c); 14-33.2; 14-34.6(b); 14-277.3A; or
37 former G.S. 14-277.3.

38 e. A Class I felony if it is a violation of one of the following:
39 G.S. 14-32.3(b); ~~14-34.6(b);~~ 14-34.6(b), for offenses committed prior
40 to December 1, 2011; or 14-190.17A.

41 f. An attempt of any of the felonies listed in this subdivision if the
42 attempted felony is punishable as a felony.

43 g. Any of the following misdemeanor offenses when the offense is
44 committed between persons who have a personal relationship as
45 defined in G.S. 50B-1(b): G.S. 14-33(c)(1); 14-33(c)(2); 14-33(a);
46 14-34; 14-134.3; 14-277.3A; or former G.S. 14-277.3.

47 h. Any violation of a valid protective order under G.S. 50B-4.1."

48 **SECTION 4.(b)** G.S. 15A-830(a)(7)d., as enacted by this section, becomes
49 effective December 1, 2013, and applies to all offenses committed on or after that date.
50 G.S. 15A-830(a)(7)e., as enacted by this section, is effective when it becomes law.

51 **SECTION 5.(a)** G.S. 7A-273(2) reads as rewritten:

1 "(2) In misdemeanor or infraction cases involving alcohol offenses under Chapter
2 18B of the General Statutes, traffic offenses, hunting, fishing, State park and
3 recreation area rule offenses under Chapter 113 of the General Statutes,
4 boating offenses under Chapter 75A of the General Statutes, open burning
5 offenses under Article 75 of Chapter 106 of the General Statutes, and
6 littering offenses under G.S. 14-399(c) and G.S. 14-399(c1), to accept
7 written appearances, waivers of trial or hearing and pleas of guilty or
8 admissions of responsibility, in accordance with the schedule of offenses and
9 fines or penalties promulgated by the Conference of Chief District Judges
10 pursuant to G.S. 7A-148, and in such cases, to enter judgment and collect the
11 fines or penalties and costs;"

12 **SECTION 5.(b)** This section becomes effective July 1, 2011.

13 **SECTION 6.(a)** G.S. 15A-145.4(c) reads as rewritten:

14 "(c) Whenever any person who had not yet attained the age of 18 years at the time of the
15 commission of the offense and has not previously been convicted of any felony or
16 misdemeanor other than a traffic violation under the laws of the United States or the laws of
17 this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may
18 file a petition in the court where the person was convicted for expunction of the nonviolent
19 felony from the person's criminal record. The petition shall not be filed earlier than (i) four
20 years after the date of the conviction or ~~when~~ (ii) the completion of any active sentence, period
21 of probation, and post-release supervision has been served, supervision, whichever occurs later.
22 The person shall also perform at least 100 hours of community service, preferably related to the
23 conviction, before filing a petition for expunction under this section. The petition shall contain
24 the following:

- 25 (1) An affidavit by the petitioner that the petitioner has been of good moral
26 character since the date of conviction of the nonviolent felony in question
27 and has not been convicted of any other felony or any misdemeanor other
28 than a traffic violation under the laws of the United States or the laws of this
29 State or any other state.
- 30 (2) Verified affidavits of two persons who are not related to the petitioner or to
31 each other by blood or marriage, that they know the character and reputation
32 of the petitioner in the community in which the petitioner lives and that the
33 petitioner's character and reputation are good.
- 34 (3) A statement that the petition is a motion in the cause in the case wherein the
35 petitioner was convicted.
- 36 (4) An application on a form approved by the Administrative Office of the
37 Courts requesting and authorizing (i) a State and national criminal history
38 record check by the Department of Justice using any information required by
39 the Administrative Office of the Courts to identify the individual; (ii) a
40 search by the Department of Justice for any outstanding warrants or pending
41 criminal cases; and (iii) a search of the confidential record of expunctions
42 maintained by the Administrative Office of the Courts. The application shall
43 be forwarded to the Department of Justice and to the Administrative Office
44 of the Courts, which shall conduct the searches and report their findings to
45 the court.
- 46 (5) An affidavit by the petitioner that no restitution orders or civil judgments
47 representing amounts ordered for restitution entered against the petitioner
48 are outstanding.
- 49 (6) An affidavit by the petitioner that the petitioner has performed at least 100
50 hours of community service since the conviction for the nonviolent felony.

1 The affidavit shall include a list of the community services performed, a list
2 of the recipients of the services, and a detailed description of those services.

- 3 (7) An affidavit by the petitioner that the petitioner possesses a high school
4 diploma, a high school graduation equivalency certificate, or a General
5 Education Development degree.

6 The petition shall be served upon the district attorney of the court wherein the case was
7 tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file
8 any objection thereto and shall be duly notified as to the date of the hearing of the petition. The
9 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
10 victim of the request for expunction prior to the date of the hearing."

11 **SECTION 6.(b)** G.S. 15A-145.4(e)(1) reads as rewritten:

- 12 "(1) The petitioner has remained of good moral character and has been free of
13 conviction of any felony or misdemeanor, other than a traffic violation, ~~for~~
14 ~~four years from since~~ the date of conviction of the nonviolent felony in
15 ~~question or any active sentence, period of probation, or post release~~
16 ~~supervision has been served, whichever is later.~~question."

17 **SECTION 6.(c)** G.S. 15A-145.5(c) reads as rewritten:

18 "(c) A person may file a petition, in the court where the person was convicted, for
19 expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's
20 criminal record if the person has no other misdemeanor or felony convictions, other than a
21 traffic violation, and was convicted of a nonviolent misdemeanor or nonviolent felony that is
22 eligible pursuant to subsection (b) of this section. The petition shall not be filed earlier than (i)
23 15 years after the date of the conviction or ~~when (ii) the completion of any active sentence,~~
24 ~~period of probation, and post-release supervision has been served, supervision, whichever~~
25 occurs later. The petition shall contain, but not be limited to, the following:

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

50 Upon filing of the petition, the petition shall be served upon the district attorney of the court
51 wherein the case was tried resulting in conviction. The district attorney shall have 30 days

1 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
2 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
3 additional 30 days to file objection to the petition. The district attorney shall make his or her
4 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
5 to the date of the hearing.

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

11 If the court, after hearing, finds that the petitioner has not previously been granted an
12 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
13 15A-145.4; the petitioner has remained of good moral character; the petitioner has no
14 outstanding warrants or pending criminal cases; the petitioner has no other felony or
15 misdemeanor convictions other than a traffic violation; the petitioner has no outstanding
16 restitution orders or civil judgments representing amounts ordered for restitution entered
17 against the petitioner; ~~and the petitioner was convicted of an offense eligible for expunction~~
18 ~~under this section and section; and the petition was filed no earlier than (i) 15 years after the~~
19 ~~date of the conviction or (ii) the completion of any active sentence, period of probation, and~~
20 ~~post-release supervision imposed for the conviction, whichever occurred later; was convicted~~
21 ~~of, and completed any sentence received for, the nonviolent misdemeanor or nonviolent felony~~
22 ~~at least 15 years prior to the filing of the petition,~~ it may order that such person be restored, in
23 the contemplation of the law, to the status the person occupied before such arrest or indictment
24 or information. If the court denies the petition, the order shall include a finding as to the reason
25 for the denial."

26 **SECTION 6.(d)** This section becomes effective December 1, 2013, and applies to
27 offenses filed on or after that date, but petitions filed prior to that date are not abated by this
28 act.

29 **SECTION 7.** Except as provided otherwise, this act is effective when it becomes
30 law.