

## **Voting on:**

### **Legislative Revisions and Legal Issues Subcommittee Recommendations**

- **Recommendation #1:** Expunction advisement (see attached):
  - Accept TV-4 [v.5] with and/or added and conviction sentence
  - Change (a)(1) to statement
  - Remove (a)(2)
  - (a)(5) be a statement instead of an affidavit
  - (e) be removed completely
  - Include on line 21 (a)(i) "Petition cannot be filed earlier than completion of the sentence or any period of probation, and upon his 18th birthday."

*These changes are tracked on the following pages.*

#### **Recommendation #2:** Amend 7B-1604(b)(ii)

- **Purpose:** To allow youth with previous motor vehicle violations excluding DWI, to be included under juvenile jurisdiction upon the Dec. 1, 2019 implementation of the Juvenile Justice Reinvestment Act.
- 7B-1604 (b): A juvenile (i) who is transferred to and convicted in superior court or (ii) who has previously been convicted in either district or superior court for a felony or a misdemeanor, ~~including~~ ~~excluding~~ a violation of the motor vehicle laws other than driving while impaired under State law, shall be prosecuted as an adult for any criminal offense the juvenile commits after the district or superior court conviction.

#### **Recommendation #3:** Amend NCGS 7B-2508 (g1)

- **Purpose:** To establish the standard of finding related to gang activity, and hence the standard on which the gang suppression portion of S.L. 2017-57 is based.
- (g1) **(Effective December 1, 2019)** Notwithstanding subsection (f) of this section, if a juvenile is adjudicated for an offense that the court finds beyond a reasonable doubt was committed as part of criminal gang activity as defined in G.S. 7B-2508.1, the juvenile shall receive a disposition one level higher than would otherwise be provided for the class of offense and delinquency history level.

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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BILL DRAFT 2017-TV-4 [v.5]

(THIS IS A DRAFT AND IS NOT READY FOR INTRODUCTION)  
05/01/2018 11:46:20 AM

Short Title: Expunction for Juveniles/Raise Age Implementn. (Public)

Sponsors: Senator Barringer (Primary Sponsor).

Referred to:

A BILL TO BE ENTITLED

AN ACT AMENDING THE CRIMINAL PROCEDURE ACT TO PROVIDE EXPUNCTION OF RECORDS FOR FIRST TIME OFFENDERS UNDER THE AGE OF 18 AT THE TIME OF CONVICTION OF MISDEMEANORS AND CERTAIN FELONIES UPON COMPLETION OF THE SENTENCE PENDING THE RAISE THE AGE IMPLEMENTATION.

The General Assembly of North Carolina enacts:

**SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended by adding a new section to read:

**"§15A-145.7. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanors and certain felonies upon completion of the sentence.**

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed on or after the person's sixteenth birthday, but before the person attained the age of 18 years, or (ii) pleads guilty to or is guilty of a Class H or I felony and the offense was committed on or after the person's sixteenth birthday, but before the person attained the age of 18 years, he may file a petition in the court of the county where he was convicted for expunction of the misdemeanor or felony from his criminal record. The petition cannot be filed earlier than: ~~completion of the sentence or of any period of probation, and upon his 18<sup>th</sup> birthday,~~ and the petition shall contain, but not be limited to limited to, the following:

(1) ~~A statement~~ by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor or felony in question and has not been convicted of any 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.

(2) ~~▼~~

(3) ~~A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~

\* 2017-TV-4-v-5 \*

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Deleted: two years after the date of the conviction, or (ii) the completion

Deleted: of any period of probation,

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Deleted: 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 he lives and that his character and  
reputation are good.

- 1           (4) An application on a form approved by the Administrative Office of the Courts
- 2           requesting and authorizing a name-based State and national criminal record
- 3           check by the Department of Public Safety using any information required by
- 4           the Administrative Office of the Courts to identify the individual and a search
- 5           of the confidential record of expunctions maintained by the Administrative
- 6           Office of the Courts. The application shall be filed with the clerk of superior
- 7           court. The clerk of superior court shall forward the application to the
- 8           Department of Public Safety and to the Administrative Office of the Courts,
- 9           which shall conduct the searches and report their findings to the court.
- 10          (5) A ~~statement~~ by the petitioner that no restitution orders or civil judgments
- 11          representing amounts ordered for restitution entered against him are
- 12          outstanding.

13          The petition shall be served upon the district attorney of the court wherein the case was tried  
 14          resulting in conviction. The district attorney shall have 10 days thereafter in which to file any  
 15          objection thereto and shall be duly notified as to the date of the hearing of the petition.

16          The judge to whom the petition is presented is authorized to call upon a probation officer for  
 17          any additional investigation or verification of the petitioner's conduct during the two-year period  
 18          that he deems desirable.

19          (a1) Nothing in this section shall be interpreted to allow the expunction of any offense  
 20          involving impaired driving as defined in G.S. 20-4.01(24a).

21          (b) If the court, after hearing, finds that the petitioner had remained of good behavior  
 22          and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two  
 23          years from the date of conviction of the misdemeanor or felony in question, the petitioner has no  
 24          outstanding restitution orders or civil judgments representing amounts ordered for restitution  
 25          entered against him, and petitioner was not 18 years old at the time of the offense in question, it  
 26          shall order that such person be restored, in the contemplation of the law, to the status he occupied  
 27          before such arrest or indictment or information.

28          (b1) No person as to whom such order has been entered shall be held thereafter under any  
 29          provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of  
 30          his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response  
 31          to any inquiry made of him for any purpose. This subsection shall not apply to a sentencing  
 32          hearing when the person has been convicted of a subsequent criminal offense.

33          (c) The court shall also order that the misdemeanor or felony conviction, be expunged  
 34          from the records of the court. The court shall direct all law-enforcement agencies, the Division  
 35          of Adult Correction and Juvenile Justice of the Department of Public Safety, the Division of  
 36          Motor Vehicles, and any other State or local government agencies identified by the petitioner as  
 37          bearing record of the same to expunge their records of the petitioner's conviction. The clerk shall  
 38          notify State and local agencies of the court's order as provided in G.S. 15A-150.

39          (d) The clerk shall notify State and local agencies of the court's order as provided in 40  
 40          G.S. 15A-150.

41          .....  
 42          .....  
 43          .....  
 44          .....  
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 47          ....."

48          SECTION 2. G.S. 15A-145.5(c) reads as rewritten:

49          "§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

50          ...

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Deleted: (e) . A person who files a petition for expunction of a criminal record under this section

Deleted: must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the

Deleted: time the petition is filed. Fees collected under this subsection are payable to the Administrative

Deleted: Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and

Deleted: fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs

Deleted: of criminal record checks performed in connection with processing petitions for expunctions

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1 (c) A person may file a petition, in the court of the county where the person was  
2 convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the  
3 person's criminal record if the person has no other misdemeanor or felony convictions, other than  
4 a traffic violation. The petition shall not be filed earlier than 10 years after the date of the  
5 conviction for a nonviolent felony or five years for a nonviolent misdemeanor or when any active  
6 sentence, period of probation, and post-release supervision has been served, whichever occurs  
7 later. The petition shall contain, but not be limited to, the following:

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

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

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

45 If the court, after hearing, finds that the petitioner has not previously been granted an 46  
46 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, ~~or 15A-145.4;~~  
47 15A-145.4, or 15A-145.7; the petitioner has remained of good moral character; the petitioner has  
48 no outstanding warrants or pending criminal cases; the petitioner has no other felony or  
49 misdemeanor convictions other than a traffic violation; the petitioner has no outstanding  
50 restitution orders or civil judgments representing amounts ordered for restitution entered against  
51 the petitioner; and the petitioner was convicted of an offense eligible for expunction under this

1 section and was convicted of, and completed any sentence received for, a nonviolent felony at  
2 least 10 years prior to the filing of the petition or a nonviolent misdemeanor at least five years  
3 prior to the filing of the petition, it may order that such person be restored, in the contemplation  
4 of the law, to the status the person occupied before such arrest or indictment or information,  
5 except as provided in G.S. 15A-151.5. If the court denies the petition, the order shall include a  
6 finding as to the reason for the denial.

7 ..."

8 **SECTION 3.** G.S. 15A-151.5(a) reads as rewritten:

9 **"§ 15A-151.5. Prosecutor access to expunged files.**

10 (a) Notwithstanding any other provision of this Article, the Administrative Office of the  
11 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available  
12 to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under  
13 any of the following:

- 14 (1) G.S. 15A-145. Expunction of records for first offenders under the age of 18 at  
15 the time of conviction of misdemeanor; expunction of certain other  
16 misdemeanors.
- 17 (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18  
18 at the time of conviction of certain gang offenses.
- 19 (3) G.S. 15A-145.2. Expunction of records for first offenders not over 21 years of  
20 age at the time of the offense of certain drug offenses.
- 21 (4) G.S. 15A-145.3. Expunction of records for first offenders not over 21 years of  
22 age at the time of the offense of certain toxic vapors offenses.
- 23 (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18  
24 years of age at the time of the commission of a nonviolent felony.
- 25 (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age  
26 limitation.
- 27 (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- 28 (7b) G.S. 15A-145.7. Expunction of records for first offenders under the age of 18  
29 at the time of conviction of misdemeanors and certain felonies.
- 30 (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- 31 (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed. 32

32 ..."

33 **SECTION 4.** This act is effective when it becomes law, and applies to offenses  
34 committed between July 1, 2017 and November 30, 2019.