

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 1089
PROPOSED COMMITTEE SUBSTITUTE H1089-PCS40772-ST-61

Short Title: Candidacy Challenge/Expunged Felony/Sheriff.

(Public)

Sponsors:

Referred to:

June 11, 2018

1 A BILL TO BE ENTITLED
2 AN ACT TO REQUIRE THAT THE BURDEN OF PROOF IN CERTAIN CHALLENGES TO
3 CANDIDACY BE PLACED ON THE CHALLENGER UNDER THE LAWS
4 GOVERNING ELECTIONS, TO REQUIRE A CANDIDATE FOR SHERIFF TO
5 DISCLOSE ALL EXPUNGED FELONIES, TO CLARIFY FELONS VOTING WITHOUT
6 RIGHTS OF CITIZENSHIP RESTORED, AND TO REQUEST THE GENERAL
7 ASSEMBLY STUDY THE REGULATION OF DIGITAL COMMUNICATION IN
8 ELECTIONEERING COMMUNICATIONS AND ADVERTISING DISCLOSURES.

9 The General Assembly of North Carolina enacts:

10 **SECTION 1.(a)** G.S. 163A-1029(a) reads as rewritten:

11 "(a) ~~The~~ Except for a challenge based on residency as provided in subsection (b) of this
12 section, the burden of proof shall be upon the ~~candidate, challenger,~~ who must show by a
13 preponderance of the evidence of the record as a whole that ~~he or she is~~ the candidate is not
14 qualified to be a candidate for the office."

15 **SECTION 1.(b)** This section is effective when it becomes law and applies to
16 challenges to candidacy on or after that date.

17 **SECTION 2.(a)** G.S. 162-2 reads as rewritten:

18 "§ 162-2. **Disqualifications for the office.**

19 (a) No person shall be eligible for the office of sheriff who ~~is~~

20 (1) ~~Is~~ not of the age of 21 years, ~~or has years.~~

21 (2) ~~Has been convicted of a felony against this State, the United States, or another~~
22 ~~state, including an expunction of any felony.~~

23 (3) ~~Has not resided in the county in which he that person is chosen for one year~~
24 ~~immediately preceding his the election.~~

25 (b) ~~Notwithstanding Article 5 of Chapter 15A of the General Statutes, any individual~~
26 ~~seeking election, or appointment for a vacancy, to the office of sheriff, shall disclose all felony~~
27 ~~convictions in accordance with G.S. 163A-972, regardless of whether or not a conviction was~~
28 ~~expunged. This section shall not apply to pardons of innocence or judicial determinations of~~
29 ~~actual innocence.~~

30 (c) No person shall engage in the practice of law or serve as a member of the General
31 Assembly while serving as sheriff."

32 **SECTION 2.(b)** G.S. 163A-972 is amended by adding a new subsection to read:

33 "(f) Sheriff Candidates – Expunction Disclosure. – In addition to all disclosures under
34 subsection (e) of this section, a candidate for the office of sheriff shall disclose all expunctions
35 under G.S. 15A-145.1, 15A-145.4, 15A-145.5, and 15A-145.6, except for a felony expungement
36 that is the result of a pardon of innocence or a judicial determination of actual innocence."



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1 **SECTION 2.(c)** G.S. 15A-151 reads as rewritten:

2 "**§ 15A-151. Confidential agency files; exceptions to expunction.**

3 (a) The Administrative Office of the Courts shall maintain a confidential file for
4 expungements containing the petitions granted under this Article and the names of those people
5 for whom it received a notice under G.S. 15A-150. The information contained in the file may be
6 disclosed only as follows:

- 7 (1) Upon request of a judge of the General Court of Justice of North Carolina for
8 the purpose of ascertaining whether a person charged with an offense has been
9 previously granted a discharge or an expunction.
- 10 (2) Upon request of a person requesting confirmation of the person's own
11 discharge or expunction.
- 12 (3) To the General Court of Justice of North Carolina in response to a subpoena
13 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 14 (4) Upon request of State or local law enforcement, if the criminal record was
15 expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6 for
16 employment purposes only.
- 17 (5) Upon the request of the North Carolina Criminal Justice Education and
18 Training Standards Commission, if the criminal record was expunged
19 pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6 for certification
20 purposes only.
- 21 (6) Upon request of the North Carolina Sheriff's Standards Commission, if the
22 criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or
23 15A-145.6 for certification purposes only.
- 24 (7) To the district attorney in accordance with G.S. 15A-151.5.
- 25 (8) To a county board of elections or the State Board of Elections and Ethics
26 Enforcement, if a candidate challenge is filed under Part 3 of Article 19 of
27 Chapter 163A of the General Statutes.

28 (b) All agencies required under G.S. 15A-150 to expunge from records all entries made
29 as a result of a charge or conviction ordered expunged who maintain a licensing agreement to
30 provide record information to a private entity shall maintain a confidential file containing
31 information verifying the expunction and subsequent notification to private entities as required
32 by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person
33 requesting confirmation of expunction of the record of the person's own discharge or expunction,
34 as provided in G.S. 15A-152.

35 (c) The Division of Motor Vehicles shall not be required to expunge a record if the
36 expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety
37 Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted
38 pursuant to either act.

39 (d) The information contained in the confidential file disclosed under subdivision (a)(8)
40 of this section may be disclosed to the public."

41 **SECTION 2.(d)** G.S. 15A-153(e) reads as rewritten:

42 "(e) [Exceptions. –] The provisions of subsection (d) of this section do not apply to any
43 individual seeking or holding the office of sheriff, or to any applicant or licensee seeking or
44 holding any certification issued by the North Carolina Criminal Justice Education and Training
45 Standards Commission pursuant to Chapter 17C of the General Statutes or the North Carolina
46 Sheriffs Education and Training Standards Commission pursuant to Chapter 17E of the General
47 Statutes:

- 48 (1) Convictions expunged pursuant to G.S. 15A-145.4. – Persons pursuing
49 certification under the provisions of Chapter 17C or 17E of the General
50 Statutes shall disclose any and all felony convictions to the certifying

1 Commission regardless of whether or not the felony convictions were
2 expunged pursuant to the provisions of G.S. 15A-145.4.

- 3 (2) Convictions expunged pursuant to G.S. 15A-145.5. – Persons pursuing
4 certification under the provisions of Chapter 17C or 17E of the General
5 Statutes shall disclose any and all convictions to the certifying Commission
6 regardless of whether or not the convictions were expunged pursuant to the
7 provisions of G.S. 15A-145.5."

8 **SECTION 2.(e)** This section is effective when it becomes law and applies to
9 elections held on or after that date and to the filling of vacancies occurring on or after that date.

10 **SECTION 3.(a)** G.S. 163A-1389 reads as rewritten:

11 "**§ 163A-1389. Certain acts declared felonies.**

12 Any person who shall, in connection with any primary, general or special election held in this
13 State, do any of the acts or things declared in this section to be unlawful, shall be guilty of a Class
14 I felony. It shall be unlawful:

15 ...

- 16 (5) For any person convicted of a crime which excludes the person from the right
17 of suffrage, to vote with intent to commit a fraud at any primary or election
18 without having been restored to the right of citizenship in due course and by
19 the method provided by law.

20"

21 **SECTION 3.(b)** This section becomes effective December 1, 2018, and applies to
22 offenses committed on or after that date.

23 **SECTION 3.5.** The Joint Legislative Elections Oversight Committee is requested to
24 study the regulation of digital communication in electioneering communications and advertising
25 disclosures. The Joint Legislative Elections Oversight Committee is requested to present its final
26 report to the 2019 General Assembly, including any recommended legislation, on or before
27 January 1, 2019.

28 **SECTION 4.** Except as otherwise provided, this act is effective when it becomes
29 law.