



# HOUSE BILL 312: Qualifications for Sheriff/Expunction.

2021-2022 General Assembly

<b>Committee:</b>		<b>Date:</b>	February 3, 2022
<b>Introduced by:</b>		<b>Prepared by:</b>	Hillary Woodard Staff Attorney
<b>Analysis of:</b>	S.L. 2021-107		

**OVERVIEW:** *S.L. 2021-107, which became effective October 1, 2021, does the following:*

- *Clarifies that an individual who has been convicted of a felony, regardless of any expunctions or restoration of rights of citizenship, is ineligible for the office of sheriff, in accordance with Article VII, Section 2 of the North Carolina Constitution.*
- *Requires a candidate or appointee for the office of sheriff to file a disclosure statement prepared by the North Carolina Sheriff's Education and Training Standards Commission verifying that the candidate or appointee has no prior felony convictions or expungements of felony convictions.*

**CURRENT LAW:** The sheriff is a constitutional officer established in Article VII, Section 2 of the North Carolina Constitution. Sheriffs are elected in partisan elections in even-numbered years to serve a four-year term.

In 2010, an amendment to Article VII, Section 2 of the North Carolina Constitution was approved by voters. That amendment provides "No person is eligible to serve as Sheriff if that person has been convicted of a felony against this State, the United States, or another state, whether or not that person has been restored to the rights of citizenship in the manner prescribed by law."

When a candidate for elected office files a notice of candidacy with the State Board of Elections, the candidate must file a statement on that notice of candidacy indicating whether the candidate has ever been convicted of a felony. Generally, felony convictions need not be disclosed if the conviction was dismissed as a result of reversal on appeal or resulted in a pardon of innocence or expungement. If the candidate does not complete this statement, the candidate's filing for office is not complete. G.S. 163-106.

Since 2011, in North Carolina, some felony convictions can be expunged. If granted an expungement, that person cannot be held guilty of perjury or otherwise giving a false statement because that person failed to disclose the arrest, indictment, information, trial, or conviction of that expunged felony.

**BILL ANALYSIS:** This act provided that an individual whose rights of citizenship had been restored, or an individual who had been granted an expunction following a felony conviction, is not eligible for the office of sheriff, consistent with the 2010 NC Constitutional amendment. An individual who has received an unconditional pardon of innocence is excluded from this disqualification.

Any individual filing a notice of candidacy, or any appointee selected to fill a vacancy, to the office of sheriff is required to provide a valid disclosure statement prepared by the North Carolina Sheriffs' Education and Training Statements Commission (Commission) verifying that the individual has no prior felony convictions or expungements of felony convictions. Candidates seeking office are required to file this disclosure statement at the time of filing a notice of candidacy for office. If the candidate does not complete this statement, the candidate's filing for office is not complete.

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# House Bill 312

Page 2

Upon the request of a candidate, the Commission prepares the disclosure statement for the candidate and selected appointees to be filed with the notice of candidacy. The following requirements apply:

- Candidates or selected appointees are required to provide information required by the Commission for the completion of the disclosure statement, including any evidence that the individual has been granted an unconditional pardon of innocence for a felony.
- The Commission must conduct a criminal history record check of state and national databases, request confirmation from the Administrative Office of the Courts on any expunctions of felony records, and determine if the individual has ever been convicted of a felony.
- The disclosure statement must include the name of the individual, the date the disclosure statement was prepared, the county of residence of the individual, and a statement that the individual has no prior felony convictions or expungements for felony convictions, if found to be true.
- The request for a disclosure statement, any supporting documents, and the disclosure statement prepared by the Commission are confidential and are not public records.
- Prepared disclosure statements are valid for 90 days after issuance.

This act also does the following:

- Allows the Administrative Office of the Courts to disclose to the Commission any expunged criminal records, upon request by the Commission, for the purpose of preparing a disclosure statement.
- Allows the Department of Public Safety to provide to the Commission a criminal history of the individual, upon submission of a request, fingerprints of the individual, and a form signed by the individual consenting to the criminal record check and use of fingerprints and other identifying information.
- Amends expunction statutes to require an individual requesting a disclosure statement to disclose any felony convictions to the Commission, including any felony convictions that were expunged.
- Requires boards of county commissioners to not make any appointment to fill a vacancy in the office of sheriff without first being presented a valid disclosure statement of no felony convictions or expungements with respect to the individual being appointed.

**EFFECTIVE DATE:** This act became effective October 1, 2021, and applies to elections and appointments to the office of sheriff on or after that date.

*\*Staff Attorneys Erika Churchill, Jessica Sammons, and Susan Sitze substantially contributed to this summary.*