

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE BILL 794

Short Title: Expunge Certain Misdemeanors/Fee. (Public)

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Sponsors: Representative Starnes.

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Referred to: Judiciary III, if favorable, Finance.

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March 27, 2003

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A PERSON WHO IS CONVICTED OF A  
2 MISDEMEANOR MAY HAVE HIS OR HER RECORD EXPUNGED IN  
3 CERTAIN CIRCUMSTANCES AND TO ESTABLISH A FEE FOR THE COST  
4 OF HAVING THE RECORD EXPUNGED.  
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6 The General Assembly of North Carolina enacts:

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

9 "**§ 15A-149. Expunction of records for certain misdemeanors.**

10 Any person who was convicted of a misdemeanor and who has not been convicted  
11 of any other criminal offense for 10 years from the date of conviction may apply by  
12 petition or written motion to the court where the person was convicted for expunction of  
13 the misdemeanor from the person's criminal record. The petition cannot be filed earlier  
14 than 10 years after the date of the conviction or any period of probation, whichever  
15 occurs later, and the petition shall include the following:

16 (1) An affidavit by the petitioner that the petitioner has been of good  
17 behavior for the 10-year period since the date of conviction of the  
18 misdemeanor in question and has not been convicted of any felony or  
19 misdemeanor under the laws of the United States or the laws of this  
20 State or any other state.

21 (2) Verified affidavits of two persons who are not related to the petitioner  
22 or to each other by blood or marriage that they know the character and  
23 reputation of the petitioner in the community in which the petitioner  
24 lives and that the petitioner's character and reputation are good.

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

27 (4) Affidavits of the clerk of superior court, chief of police, where  
28 appropriate, and sheriff of the county in which the petitioner was  
29 convicted and, if different, the county of which the petitioner is a

1           resident showing that the petitioner has not been convicted of a felony  
2           or misdemeanor under the laws of this State at any time prior to the  
3           conviction for the misdemeanor in question or during the 10-year  
4           period following that conviction.

5           The petition shall be served upon the district attorney of the court where the case  
6           was tried resulting in conviction. The district attorney shall have 10 days thereafter in  
7           which to file any objection to the petition and shall be duly notified as to the date of the  
8           hearing of the petition.

9           The judge to whom the petition is presented may call upon a probation officer for  
10          any additional investigation or verification of the petitioner's conduct during the 10-year  
11          period since the date of conviction of the misdemeanor in question that the judge deems  
12          desirable.

13          (b) If the court, after hearing, finds that the petitioner had remained of good  
14          behavior and been free of conviction of any felony or misdemeanor for 10 years from  
15          the date of conviction of the misdemeanor in question, the court may order that the  
16          person be restored, in the contemplation of the law, to the status the person occupied  
17          before the arrest or indictment or information. No person as to whom the order has been  
18          entered shall be held thereafter under any provision of any laws to be guilty of perjury  
19          or otherwise giving a false statement by reason of the person's failure to recite or  
20          acknowledge the arrest, or indictment, information, or trial, in response to any inquiry  
21          made of the person for any purpose.

22          (c) The court may also order that the misdemeanor conviction be expunged from  
23          the records of the court and direct all law enforcement agencies bearing record of the  
24          same to expunge their records of the conviction. If the court does order the expunction,  
25          then the clerk shall forward a certified copy of the order to the sheriff, chief of police, or  
26          other arresting agency. The sheriff, chief of police, or head of such other arresting  
27          agency shall then transmit the copy of the order with a form supplied by the State  
28          Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of  
29          Investigation shall forward the order to the Federal Bureau of Investigation.

30          (d) The clerk of superior court in each county in North Carolina shall, as soon as  
31          practicable after each term of court in the clerk's county, file with the Administrative  
32          Office of the Courts the names of those persons granted a discharge under the  
33          provisions of this section, and the Administrative Office of the Courts shall maintain a  
34          confidential file containing the names of persons granted conditional discharges. The  
35          information contained in the file shall be disclosed only to judges of the General Court  
36          of Justice of North Carolina for the purpose of ascertaining whether any person charged  
37          with an offense has been previously granted a discharge.

38          (e) A person who files a petition for expunction of a criminal record under this  
39          section shall pay the clerk of superior court in the county a fee of sixty-five dollars  
40          (\$65.00) at the time the petition is filed. Fees collected under this subsection shall be  
41          deposited in the General Fund. This subsection does not apply to petitions filed by an  
42          indigent."

43           **SECTION 2.** This act is effective when it becomes law.