

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE DRH80342-LH-226A (4/9)

Short Title: Clarifying Changes to Expunction Statute.

(Public)

Sponsors: Representative Moore.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO CLARIFY THAT A FIRST OFFENDER WHO COMMITTED A MISDEMEANOR WHEN LESS THAN EIGHTEEN YEARS OF AGE MAY HAVE THE CONVICTION EXPUNGED ALTHOUGH THE PERSON MAY BE EIGHTEEN YEARS OF AGE OR OLDER AT THE TIME OF THE CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of ~~conviction of misdemeanor; commission of a misdemeanor for which the offender was convicted;~~ expunction of certain other misdemeanors.

(a) Whenever any person who has (i) ~~committed a misdemeanor when under not yet attained~~ the age of 18 years and 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, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and 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, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in ~~question~~ question, including the period of time between the date of the

1 commission and conviction of the misdemeanor, and has not been
2 convicted of any felony, or misdemeanor other than a traffic violation,
3 under the laws of the United States or the laws of this State or any
4 other state.

5 (2) Verified affidavits of two persons who are not related to the petitioner
6 or to each other by blood or marriage, that they know the character and
7 reputation of the petitioner in the community in which he lives and that
8 his character and reputation are good.

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

11 (4) Affidavits of the clerk of superior court, chief of police, where
12 appropriate, and sheriff of the county in which the petitioner was
13 convicted and, if different, the county of which the petitioner is a
14 resident, showing that the petitioner has not been convicted of a felony
15 or misdemeanor other than a traffic violation under the laws of this
16 State at any time prior to the conviction for the misdemeanor in
17 question or during the two-year period following that
18 ~~conviction~~conviction, including the period of time between the date of
19 the commission and conviction of the misdemeanor.

20 (5) An affidavit by the petitioner that no restitution orders or civil
21 judgments representing amounts ordered for restitution entered against
22 him are outstanding.

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

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

30 (b) If the court, after hearing, finds that the petitioner had remained of good
31 behavior and been free of conviction of any felony or misdemeanor, other than a traffic
32 violation, for two years from the date of conviction of the misdemeanor in question,
33 including the period of time between the date of the commission and conviction of the
34 misdemeanor, the petitioner has no outstanding restitution orders or civil judgments
35 representing amounts ordered for restitution entered against him, and (i) petitioner was
36 not 18 years old at the time of the ~~conviction in question~~commission of the offense for
37 which the petitioner was convicted, or (ii) petitioner was not 21 years old at the time of
38 the conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order
39 that such person be restored, in the contemplation of the law, to the status he occupied
40 before such arrest or indictment or information. No person as to whom such order has
41 been entered shall be held thereafter under any provision of any laws to be guilty of
42 perjury or otherwise giving a false statement by reason of his failure to recite or
43 acknowledge such arrest, or indictment, information, or trial, or response to any inquiry
44 made of him for any purpose.

1 (c) The court shall also order that the said misdemeanor conviction be expunged
2 from the records of the court, and direct all law-enforcement agencies bearing record of
3 the same to expunge their records of the conviction. The clerk shall forward a certified
4 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,
5 chief or head of such other arresting agency shall then transmit the copy of the order
6 with a form supplied by the State Bureau of Investigation to the State Bureau of
7 Investigation, and the State Bureau of Investigation shall forward the order to the
8 Federal Bureau of Investigation.

9 (d) The clerk of superior court in each county in North Carolina shall, as soon as
10 practicable after each term of court in his county, file with the Administrative Office of
11 the Courts, the names of those persons granted a discharge under the provisions of this
12 section, and the Administrative Office of the Courts shall maintain a confidential file
13 containing the names of persons granted conditional discharges. The information
14 contained in such file shall be disclosed only to judges of the General Court of Justice of
15 North Carolina for the purpose of ascertaining whether any person charged with an
16 offense has been previously granted a discharge.

17 (e) A person who files a petition for expunction of a criminal record under this
18 section must pay the clerk of superior court a fee of one hundred twenty-five dollars
19 (\$125.00) at the time the petition is filed. Fees collected under this subsection shall be
20 deposited in the General Fund. This subsection does not apply to petitions filed by an
21 indigent."

22 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
23 all petitions for expunctions filed on or after that date.