

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE DRS35177-LHf-76C (2/6)

Short Title: Expunge Nonviolent Crimes.

(Public)

Sponsors: Senators Weinstein, and Kinnaird.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT AGENCIES AND FEDERALLY INSURED DEPOSITORY INSTITUTIONS FOR EMPLOYMENT PURPOSES ONLY AND TO REQUIRE THOSE AGENCIES AND INSTITUTIONS TO MAINTAIN THE CONFIDENTIALITY OF THE EXPUNGED INFORMATION, TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, TO INCREASE THE FEES FOR EXPUNCTIONS, AND TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS.

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-150. Expunction of records for conviction of certain nonviolent criminal offenses if there are no subsequent criminal convictions for at least 10 years.

(a) For purposes of this section, the term 'nonviolent criminal offense' means a misdemeanor, Class H felony, or Class I felony; however, the term does not include any of the following:

- (1) An offense that includes assault as an essential element of the offense.
- (2) An offense for which the offender must register under Article 27A of Chapter 14 of the General Statutes.
- (3) An offense that includes the possession or use of a firearm as an essential element of the offense or is used as an aggravating factor in sentencing.
- (4) An offense that is trafficking under G.S. 90-95(h).

1 (5) An offense that involves impaired driving.

2 (b) Whenever a person who has not previously been convicted of any felony or
3 misdemeanor other than a traffic violation under the laws of the United States, the laws
4 of this State, or any other state, has no outstanding warrants or pending criminal cases,
5 and has not previously obtained an expunction under this section pleads guilty to or is
6 guilty of a nonviolent criminal offense, the person may file a petition in the court where
7 he or she was convicted for expunction of the nonviolent criminal offense from the
8 person's criminal record. The petition cannot be filed earlier than 10 years after the date
9 of the conviction, period of active sentence, period of post-release supervision, or period
10 of probation has been completed, whichever occurs later. The petition shall contain, but
11 not be limited to, the following:

12 (1) An affidavit by the petitioner that he or she has been of good behavior
13 for the 10-year period since the date of conviction of the nonviolent
14 criminal offense in question, has not been convicted of any felony or
15 misdemeanor other than a traffic violation under the laws of the United
16 States or the laws of this State or any other state, has no outstanding
17 warrants or pending criminal cases, and has not previously obtained an
18 expunction under this section.

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

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

25 (4) An application on a form approved by the Administrative Office of the
26 Courts requesting and authorizing (i) a State and national criminal
27 record check by the Department of Justice using any information
28 required by the Administrative Office of the Courts to identify the
29 individual; (ii) a search by the Department of Justice for any
30 outstanding warrants or pending criminal cases; and (iii) a search of
31 the confidential record of expunctions maintained by the
32 Administrative Office of the Courts. The application shall be
33 forwarded to the Department of Justice and to the Administrative
34 Office of the Courts, which shall conduct the searches and report their
35 findings to the court.

36 (5) An affidavit by the petitioner that no restitution orders or civil
37 judgments representing amounts ordered for restitution entered against
38 the petitioner are outstanding.

39 The petition shall be served upon the district attorney of the court where the case
40 was tried resulting in conviction. The district attorney shall have 10 days to file any
41 objection to the petition and shall be notified as to the date of the hearing of the petition.

42 The judge to whom the petition is presented may call upon a probation officer for
43 any additional investigation or verification of the petitioner's conduct during the 10-year
44 period that the judge deems desirable.

1 (c) If the court, after hearing, finds that the petitioner had remained of good
2 behavior and been free of conviction of any felony or misdemeanor, other than a traffic
3 violation, for 10 years from the date of conviction of the nonviolent criminal offense in
4 question, the petitioner has not previously obtained an expunction under this section, the
5 petitioner has no outstanding warrants or pending criminal cases, and the petitioner has
6 no outstanding restitution orders or civil judgments representing amounts ordered for
7 restitution entered against the petitioner, then the court shall order that the petitioner be
8 restored, in the contemplation of the law, to the status the petitioner occupied before the
9 arrest, indictment, conviction, or information for the nonviolent criminal offense. No
10 person as to whom such order has been entered shall be held thereafter under any
11 provision of any laws to be guilty of perjury or otherwise giving a false statement by
12 reason of his or her failure to recite or acknowledge such arrest, indictment, conviction,
13 information, trial, or response to any inquiry made of the person for any purpose.

14 (d) The court shall also order that the conviction for the nonviolent criminal
15 offense be expunged from the records of the court and direct all law enforcement
16 agencies bearing record of the same to expunge their records of the conviction. The
17 clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
18 arresting agency. The sheriff, chief, or head of any other arresting agency shall then
19 transmit the copy of the order with a form supplied by the State Bureau of Investigation
20 to the State Bureau of Investigation, and the State Bureau of Investigation shall forward
21 the order to the Federal Bureau of Investigation. Expunction of records under this
22 section may occur only once with respect to any person.

23 (e) The clerk of superior court in each county in North Carolina shall, as soon as
24 practicable after each term of court in his or her county, file with the Administrative
25 Office of the Courts the names of those persons granted expunctions under the
26 provisions of this section and the offenses for which the expunctions were granted, and
27 the Administrative Office of the Courts shall maintain a confidential file containing the
28 names of persons granted expunctions and the offenses for which the expunctions were
29 granted. The information contained in the file shall be disclosed only as follows:

30 (1) To judges of the General Court of Justice of North Carolina for the
31 purpose of ascertaining whether any person charged with an offense
32 has been previously granted an expunction.

33 (2) To State and local law enforcement agencies for employment purposes
34 only.

35 (3) To federally insured depository institutions for employment purposes
36 only.

37 (f) A person who knowingly and willfully discloses or uses in an unauthorized
38 manner information obtained under subsection (e) of this section, except as otherwise
39 permitted by that subsection, is guilty of a Class 3 misdemeanor.

40 (g) A person who files a petition for expunction of a criminal record under this
41 section must pay the clerk of superior court a fee of two hundred dollars (\$200.00) at
42 the time the petition is filed. One hundred dollars (\$100.00) of the fee collected under
43 this subsection shall be remitted to the North Carolina Department of Justice to pay the
44 costs of the State Bureau of Investigation purging records pursuant to receipt of an order

1 of expunction. The remaining one hundred dollars (\$100.00) of the fee shall be remitted
2 to the Administrative Office of the Courts to pay the costs associated with
3 implementation of the provisions of this section. This subsection does not apply to
4 petitions filed by an indigent."

5 **SECTION 2.** G.S. 15A-145 reads as rewritten:

6 **"§ 15A-145. Expunction of records for first offenders under the age of 18 at the**
7 **time of conviction of misdemeanor; expunction of certain other**
8 **misdemeanors.**

9 (a) Whenever any person who has not previously obtained an expunction under
10 this section and has (i) not yet attained the age of 18 years and has not previously been
11 convicted of any felony, or misdemeanor other than a traffic violation, under the laws of
12 the United States, the laws of this State or any other state, pleads guilty to or is guilty of
13 a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years
14 and has not previously been convicted of any felony, or misdemeanor other than a
15 traffic violation, under the laws of the United States, the laws of this State or any other
16 state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to
17 G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for
18 expunction of the misdemeanor from his criminal record. The petition cannot be filed
19 earlier than two years after the date of the conviction or any period of probation,
20 whichever occurs later, and the petition shall contain, but not be limited to, the
21 following:

- 22 (1) An affidavit by the petitioner that he has not previously obtained an
23 expunction under this section and that he has been of good behavior
24 for the two-year period since the date of conviction of the
25 misdemeanor in question and has not been convicted of any felony, or
26 misdemeanor other than a traffic violation, under the laws of the
27 United States or the laws of this State or any other state.
- 28 (2) Verified affidavits of two persons who are not related to the petitioner
29 or to each other by blood or marriage, that they know the character and
30 reputation of the petitioner in the community in which he lives and that
31 his character and reputation are good.
- 32 (3) A statement that the petition is a motion in the cause in the case
33 wherein the petitioner was convicted.
- 34 ~~(4) Affidavits of the clerk of superior court, chief of police, where~~
35 ~~appropriate, and sheriff of the county in which the petitioner was~~
36 ~~convicted and, if different, the county of which the petitioner is a~~
37 ~~resident, showing that the petitioner has not been convicted of a felony~~
38 ~~or misdemeanor other than a traffic violation under the laws of this~~
39 ~~State at any time prior to the conviction for the misdemeanor in~~
40 ~~question or during the two-year period following that conviction.~~
- 41 (4) An application on a form approved by the Administrative Office of the
42 Courts requesting and authorizing a State and national criminal record
43 check by the Department of Justice using any information required by
44 the Administrative Office of the Courts to identify the individual, and

1 a search of the confidential record of expunctions maintained by the
2 Administrative Office of the Courts. The application shall be
3 forwarded to the Department of Justice and to the Administrative
4 Office of the Courts which shall conduct the searches and report their
5 findings to the court.

- 6 (5) An affidavit by the petitioner that no restitution orders or civil
7 judgments representing amounts ordered for restitution entered against
8 him are outstanding.

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

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

16 (b) If the court, after hearing, finds that the petitioner ~~had~~ has not previously
17 obtained an expunction under this section, the petitioner has remained of good behavior
18 and been free of conviction of any felony or misdemeanor, other than a traffic violation,
19 for two years from the date of conviction of the misdemeanor in question, the petitioner
20 has no outstanding restitution orders or civil judgments representing amounts ordered
21 for restitution entered against him, and (i) petitioner was not 18 years old at the time of
22 the conviction in question, or (ii) petitioner was not 21 years old at the time of the
23 conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that
24 such person be restored, in the contemplation of the law, to the status he occupied
25 before such arrest or indictment or information. No person as to whom such order has
26 been entered shall be held thereafter under any provision of any laws to be guilty of
27 perjury or otherwise giving a false statement by reason of his failure to recite or
28 acknowledge such arrest, or indictment, information, or trial, or response to any inquiry
29 made of him for any purpose.

30 (c) The court shall also order that the said misdemeanor conviction be expunged
31 from the records of the court, and direct all law-enforcement agencies bearing record of
32 the same to expunge their records of the conviction. The clerk shall forward a certified
33 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,
34 chief or head of such other arresting agency shall then transmit the copy of the order
35 with a form supplied by the State Bureau of Investigation to the State Bureau of
36 Investigation, and the State Bureau of Investigation shall forward the order to the
37 Federal Bureau of Investigation.

38 (d) The clerk of superior court in each county in North Carolina shall, as soon as
39 practicable after each term of court in his county, file with the Administrative Office of
40 the Courts, the names of those persons granted a discharge under the provisions of this
41 section, and the Administrative Office of the Courts shall maintain a confidential file
42 containing the names of persons granted conditional discharges. The information
43 contained in such file shall be disclosed only to judges of the General Court of Justice of

1 North Carolina for the purpose of ascertaining whether any person charged with an
2 offense has been previously granted a discharge.

3 (e) A person who files a petition for expunction of a criminal record under this
4 section must pay the clerk of superior court a fee of ~~one hundred twenty-five dollars~~
5 ~~(\$125.00)~~ two hundred dollars (\$200.00) at the time the petition is filed. ~~Fees collected~~
6 ~~under this subsection shall be deposited in the General Fund.~~ One hundred dollars
7 (\$100.00) of the fee collected under this subsection shall be remitted to the North
8 Carolina Department of Justice to pay the costs of the State Bureau of Investigation
9 purging records pursuant to receipt of an order of expunction. The remaining one
10 hundred dollars (\$100.00) of the fee shall be remitted to the Administrative Office of
11 the Courts to pay the costs associated with implementation of the provisions of this
12 section. This subsection does not apply to petitions filed by an indigent."

13 **SECTION 3.** G.S. 90-96(b) reads as rewritten:

14 "(b) Upon the dismissal of such person, and discharge of the proceedings against
15 him under subsection (a) of this section, such person, if he were not over 21 years of age
16 at the time of the offense, may apply to the court for an order to expunge from all
17 official records (other than the confidential file to be retained by the Administrative
18 Office of the Courts under subsection (c)) all recordation relating to his arrest,
19 indictment or information, trial, finding of guilty, and dismissal and discharge pursuant
20 to this section. The applicant shall attach to the application the following:

- 21 (1) An affidavit by the applicant that he has been of good behavior during
22 the period of probation since the decision to defer further proceedings
23 on the offense in question and has not been convicted of any felony, or
24 misdemeanor, other than a traffic violation, under the laws of the
25 United States or the laws of this State or any other state;
- 26 (2) Verified affidavits by two persons who are not related to the applicant
27 or to each other by blood or marriage, that they know the character and
28 reputation of the petitioner in the community in which he lives, and
29 that his character and reputation are good;
- 30 (3) ~~Affidavits of the clerk of superior court, chief of police, where~~
31 ~~appropriate, and sheriff of the county in which the petitioner was~~
32 ~~convicted, and, if different, the county of which the petitioner is a~~
33 ~~resident, showing that the applicant has not been convicted of a felony~~
34 ~~or misdemeanor other than a traffic violation under the laws of this~~
35 ~~State at any time prior to the conviction for the offense in question or~~
36 ~~during the period of probation following the decision to defer further~~
37 ~~proceedings on the offense in question.~~
38 (3) An application on a form approved by the Administrative Office of the
39 Courts requesting and authorizing a State and national criminal record
40 check by the Department of Justice using any information required by
41 the Administrative Office of the Courts to identify the individual, and
42 a search of the confidential record of expunctions maintained by the
43 Administrative Office of the Courts. The application shall be
44 forwarded to the Department of Justice and to the Administrative

1 Office of the Courts, which shall conduct the searches and report their
2 findings to the court.

3 The judge to whom the petition is presented is authorized to call upon a probation
4 officer for any additional investigation or verification of the petitioner's conduct during
5 the probationary period deemed desirable.

6 If the court determines, after hearing, that such person was dismissed and the
7 proceedings against him discharged and that he was not over 21 years of age at the time
8 of the offense, it shall enter such order. The effect of such order shall be to restore such
9 person in the contemplation of the law to the status he occupied before such arrest or
10 indictment or information. No person as to whom such order was entered shall be held
11 thereafter under any provision of any law to be guilty of perjury or otherwise giving a
12 false statement by reason of his failures to recite or acknowledge such arrest, or
13 indictment or information, or trial in response to any inquiry made of him for any
14 purpose.

15 The court shall also order that said conviction and the records relating thereto be
16 expunged from the records of the court, and direct all law-enforcement agencies bearing
17 records of the same to expunge their records of the conviction. The clerk shall forward a
18 certified copy of the order to the sheriff, chief of police or other arresting agency, as
19 appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,
20 shall forward such order to the State Bureau of Investigation with a form supplied by
21 the State Bureau of Investigation. The State Bureau of Investigation shall forward the
22 court order in like manner to the Federal Bureau of Investigation."

23 **SECTION 4.** G.S. 90-96(f) reads as rewritten:

24 "(f) A person who files a petition for expunction of a criminal record under this
25 section must pay the clerk of superior court a fee of ~~sixty five dollars (\$65.00)~~ two
26 hundred dollars (\$200.00) at the time the petition is filed. ~~Fees collected under this~~
27 ~~subsection shall be deposited in the General Fund. One hundred dollars (\$100.00) of the~~
28 fee collected under this subsection shall be remitted to the North Carolina Department
29 of Justice to pay the costs of the State Bureau of Investigation purging records pursuant
30 to receipt of an order of expunction. The remaining one hundred dollars (\$100.00) of the
31 fee shall be remitted to the Administrative Office of the Courts to pay the costs
32 associated with implementation of the provisions of this section. This subsection does
33 not apply to petitions filed by an indigent."

34 **SECTION 5.** G.S. 90-113.14(b) reads as rewritten:

35 "(b) Upon the dismissal of such person, and discharge of the proceedings against
36 him under subsection (a) of this section, such person, if he were not over 21 years of age
37 at the time of the offense, may apply to the court for an order to expunge from all
38 official records (other than the confidential file to be retained by the Administrative
39 Office of the Courts under subsection (c)) all recordation relating to his arrest,
40 indictment or information, trial, finding of guilty, and dismissal and discharge pursuant
41 to this section. The applicant shall attach to the application the following:

- 42 (1) An affidavit by the applicant that he has been of good behavior during
43 the period of probation since the decision to defer further proceedings
44 on the misdemeanor in question and has not been convicted of any

- 1 felony, or misdemeanor, other than a traffic violation, under the laws
2 of the United States or the laws of this State or any other state;
- 3 (2) Verified affidavits by two persons who are not related to the applicant
4 or to each other by blood or marriage, that they know the character and
5 reputation of the petitioner in the community in which he lives, and
6 that his character and reputation are good;
- 7 (3) ~~Affidavits of the clerk of superior court, chief of police, where
8 appropriate, and sheriff of the county in which the petitioner was
9 convicted, and, if different, the county of which the petitioner is a
10 resident, showing that the applicant has not been convicted of a felony
11 or misdemeanor other than a traffic violation under the laws of this
12 State at any time prior to the conviction for the misdemeanor in
13 question or during the period of probation following the decision to
14 defer further proceedings on the misdemeanor in question.~~
- 15 (3) An application on a form approved by the Administrative Office of the
16 Courts requesting and authorizing a State and national criminal record
17 check by the Department of Justice using any information required by
18 the Administrative Office of the Courts to identify the individual, and
19 a search of the confidential record of expunctions maintained by the
20 Administrative Office of the Courts. The application shall be
21 forwarded to the Department of Justice and to the Administrative
22 Office of the Courts, which shall conduct the searches and report their
23 findings to the court.

24 The judge to whom the petition is presented is authorized to call upon a probation
25 officer for any additional investigation or verification of the petitioner's conduct during
26 the probationary period deemed desirable.

27 If the court determines, after hearing, that such person was dismissed and the
28 proceedings against him discharged and that he was not over 21 years of age at the time
29 of the offense, it shall enter such order. The effect of such order shall be to restore such
30 person in the contemplation of the law to the status he occupied before such arrest or
31 indictment or information. No person as to whom such order was entered shall be held
32 thereafter under any provision of any law to be guilty of perjury or otherwise giving a
33 false statement by reason of his failures to recite or acknowledge such arrest, or
34 indictment or information, or trial in response to any inquiry made of him for any
35 purpose.

36 The court shall also order that said conviction and the records relating thereto be
37 expunged from the records of the court, and direct all law-enforcement agencies bearing
38 records of the same to expunge their records of the conviction. The clerk shall forward a
39 certified copy of the order to the sheriff, chief of police or other arresting agency, as
40 appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,
41 shall forward such order to the State Bureau of Investigation with a form supplied by
42 the State Bureau of Investigation. The State Bureau of Investigation shall forward the
43 court order in like manner to the Federal Bureau of Investigation."

1 **SECTION 6.** G.S. 90-113.14 is amended by adding a new subsection to
2 read:

3 "(f) A person who files a petition for expunction of a criminal record under this
4 section must pay the clerk of superior court a fee of two hundred dollars (\$200.00) at
5 the time the petition is filed. One hundred dollars (\$100.00) of the fee collected under
6 this subsection shall be remitted to the North Carolina Department of Justice to pay the
7 costs of the State Bureau of Investigation purging records pursuant to receipt of an order
8 of expunction. The remaining one hundred dollars (\$100.00) of the fee shall be remitted
9 to the Administrative Office of the Courts to pay the costs associated with
10 implementation of the provisions of this section. This subsection does not apply to
11 petitions filed by an indigent."

12 **SECTION 7.** This act becomes effective December 1, 2007, and applies to
13 applications for expunction of records made on or after that date.