

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2003

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HOUSE DRH70284-LHf-155 (03/27)

Short Title: First Offender/Expunge Criminal Record.

(Public)

Sponsors: Representative Wright.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CONVICTED OF A FELONY OR A MISDEMEANOR MAY HAVE HIS OR HER RECORD EXPUNGED IN CERTAIN CIRCUMSTANCES AFTER A PERIOD OF TEN YEARS FROM THE DATE OF CONVICTION AND TO ESTABLISH A FEE FOR THE ADMINISTRATIVE COST OF THE EXPUNCTION.

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-149. Expunction of records for first offenders.**

(a) Whenever any person who 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 felony or a misdemeanor, the person may file a petition in the court where the person was convicted for expunction of the felony or misdemeanor from the person's criminal record. The petition cannot be filed earlier than 10 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 the petitioner has been of good behavior for the 10-year period since the date of conviction of the felony or misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, or the laws of this State, or any other state.

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

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

3           (4) Affidavits of the clerk of superior court, chief of police, where  
4           appropriate, and sheriff of the county in which the petitioner was  
5           convicted and, if different, the county of which the petitioner is a  
6           resident, showing that the petitioner has not been convicted of a felony  
7           or misdemeanor other than a traffic violation under the laws of this  
8           State at any time prior to the conviction for the felony or misdemeanor  
9           in question or during the 10-year period following that conviction.

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

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

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

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

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

42          (e) A person who files a petition for expunction of a criminal record under this  
43          section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the

1 time the petition is filed. Fees collected under this subsection shall be deposited in the  
2 General Fund. This subsection does not apply to petitions filed by an indigent."

3 **SECTION 2.** This act becomes effective July 1, 2003.