

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 794

Short Title: Expunge Certain Misdemeanors/Fee.

(Public)

Sponsors: Representative Starnes.

Referred to: Judiciary III, if favorable, Finance.

March 27, 2003

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON WHO IS CONVICTED OF A MISDEMEANOR MAY HAVE HIS OR HER RECORD EXPUNGED IN CERTAIN CIRCUMSTANCES AND TO ESTABLISH A FEE FOR THE COST OF HAVING THE RECORD EXPUNGED.

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 certain misdemeanors.

Any person who was convicted of a misdemeanor and who has not been convicted of any other criminal offense for 10 years from the date of conviction may apply by petition or written motion to the court where the person was convicted for expunction of the 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 include 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 misdemeanor in question and has not been convicted of any felony or misdemeanor 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 the petitioner's character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was 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.