

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE DRH70249-LH-35A (01/31)

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors: Representatives Bordsen, Crawford, and Pate (Primary Sponsors).

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD
MAY BE EXPUNGED OF NONVIOLENT FELONIES.

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 who are under 18 years of
age at the time of the conviction of a nonviolent felony.**

(a) For purposes of this section the term "nonviolent felony" means any felony
except the following:

(1) A Class A through E felony.

(2) A felony that includes assault as an essential element of the offense;
and

(3) A felony that is an offense for which the convicted offender must
register under Article 27A of Chapter 14 of the General Statutes.

(b) Notwithstanding any other provision of law, if a person is convicted of more
than one nonviolent felony in the same session of court, then the multiple nonviolent
felony convictions shall be treated as one nonviolent felony conviction under this
section, and the expunction order issued under this section shall provide that the
multiple convictions shall be expunged from the person's record in accordance with this
section.

(c) Whenever any person who has 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 nonviolent felony, the person may file a petition in the
court where the person was convicted for expunction of the nonviolent felony from the
person's criminal record. The petition cannot be filed earlier than two years after the

1 date of the conviction or any period of probation, whichever occurs later. The person
2 shall also perform at least 100 hours of community service, preferably related to the
3 conviction, before filing a petition for expunction under this section. The petition shall
4 contain, but not be limited to, the following:

5 (1) An affidavit by the petitioner that he has been of good behavior for the
6 two-year period since the date of conviction of the nonviolent felony in
7 question and has not been convicted of any felony, or misdemeanor
8 other than a traffic violation, under the laws of the United States or the
9 laws of this State or any other state.

10 (2) Verified affidavits of two persons who are not related to the petitioner
11 or to each other by blood or marriage that they know the character and
12 reputation of the petitioner in the community in which he or she lives
13 and that the petitioner's character and reputation are good.

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

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

23 (5) An affidavit by the petitioner that no restitution orders or civil
24 judgments representing amounts ordered for restitution entered against
25 him or her are outstanding.

26 (6) An affidavit by the petitioner that the petitioner has performed at least
27 100 hours of community service since the conviction for the
28 nonviolent felony. The affidavit shall include a list of the community
29 services performed, a list of the recipients of the services, and a
30 detailed description of those services.

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

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

38 (d) If the court, after hearing, finds that the petitioner had remained of good
39 behavior and been free of conviction of any felony or misdemeanor, other than a traffic
40 violation, for two years from the date of conviction of the nonviolent felony in question,
41 the petitioner has no outstanding restitution orders or civil judgments representing
42 amounts ordered for restitution entered against him or her, the petitioner was less than
43 18 years old at the time of the conviction in question, and the petitioner has performed
44 at least 100 hours of community service since the time of the conviction, then the court

1 shall order that the person be restored, in the contemplation of the law, to the status the
2 person occupied before such arrest or indictment or information. No person as to whom
3 such order has been entered shall be held thereafter under any provision of any laws to
4 be guilty of perjury or otherwise giving a false statement by reason of his or her failure
5 to recite or acknowledge such arrest, or indictment, information, or trial, or response to
6 any inquiry made of the person for any purpose.

7 (e) The court shall also order that the nonviolent felony conviction be expunged
8 from the records of the court and direct all law enforcement agencies bearing record of
9 the same to expunge their records of the conviction. The clerk shall forward a certified
10 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,
11 chief, or head of any other arresting agency shall then transmit the copy of the order
12 with a form supplied by the State Bureau of Investigation to the State Bureau of
13 Investigation, and the State Bureau of Investigation shall forward the order to the
14 Federal Bureau of Investigation.

15 (f) Any person entitled to an expunction under this section may also apply to the
16 court for an order expunging DNA records when the person's DNA record or profile has
17 been included in the State DNA Database and the person's DNA sample is stored in the
18 State DNA Database. A copy of the application for expunction of the DNA record or
19 DNA sample shall be served on the district attorney for the judicial district in which the
20 charges of the nonviolent criminal offense were brought not less than 20 days prior to
21 the date of the hearing on the application. The order of expunction shall include the
22 name and address of the defendant and the defendant's attorney and shall direct the SBI
23 to send a letter documenting expunction as required by subsection (e) of this section.

24 (g) Upon receiving an order of expunction entered pursuant to subsection (e) of
25 this section, the SBI shall purge the DNA record and all other identifying information
26 from the State DNA Database and the DNA sample stored in the State DNA Database
27 covered by the order, except that the order shall not apply to other offenses committed
28 by the individual that qualify for inclusion in the State DNA Database. A letter
29 documenting expunction of the DNA record and destruction of the DNA sample shall
30 be sent by the SBI to the defendant and the defendant's attorney at the address specified
31 by the court in the order of expunction.

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

40 (i) 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 sixty-five dollars (\$65.00) at the
42 time the petition is filed. Fees collected under this subsection shall be deposited in the
43 General Fund. This subsection does not apply to petitions filed by an indigent."

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