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HOUSE BILL 1084
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Short Title: Expunge Nonviolent Felonies/Young Offenders.

(Public)

Sponsors:

Referred to:

April 4, 2005

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 commission 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 G felony.

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General
Statutes where the offense involves methamphetamines.

(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 had not yet attained the age of 18 years at the time
of the offense 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

1 felony from the person's criminal record. The petition cannot be filed earlier than two
2 years after the date of the conviction or when any active sentence, period of probation,
3 and post-release supervision has been served, whichever occurs later. The person shall
4 also perform at least 100 hours of community service, preferably related to the
5 conviction, before filing a petition for expunction under this section. The petition shall
6 contain, but not be limited to, the following:

- 7 (1) An affidavit by the petitioner that he or she has been of good behavior
8 for the two-year period since the date of conviction of the nonviolent
9 felony in question and has not been convicted of any felony or
10 misdemeanor other than a traffic violation under the laws of the United
11 States or the laws of this State or any other state.
- 12 (2) Verified affidavits of two persons who are not related to the petitioner
13 or to each other by blood or marriage that they know the character and
14 reputation of the petitioner in the community in which he or she lives
15 and that the petitioner's character and reputation are good.
- 16 (3) A statement that the petition is a motion in the cause in the case
17 wherein the petitioner was convicted.
- 18 (4) An application on a form approved by the Administrative Office of the
19 Courts requesting and authorizing a State and national criminal record
20 check by the Department of Justice using any information required by
21 the Administrative Office of the Courts to identify the individual and a
22 search of the confidential records of expunctions maintained by the
23 Administrative Office of the Courts. The application shall be
24 forwarded to the Department of Justice and to the Administrative
25 Office of the Courts to conduct the searches and report the findings to
26 the court.
- 27 (5) An affidavit by the petitioner that no restitution orders or civil
28 judgments representing amounts ordered for restitution entered against
29 him or her are outstanding.
- 30 (6) An affidavit by the petitioner that the petitioner has performed at least
31 100 hours of community service since the conviction for the
32 nonviolent felony. The affidavit shall include a list of the community
33 services performed, a list of the recipients of the services, and a
34 detailed description of those services.
- 35 (7) An affidavit by the petitioner that the petitioner possesses a high
36 school diploma or a high school graduation equivalency certificate or
37 that the petitioner is attending a basic skills program in pursuit of a
38 General Education Development Degree or adult high school diploma.

39 The petition shall be served upon the district attorney of the court wherein the case
40 was tried resulting in conviction. The district attorney shall have 10 days thereafter in
41 which to file any objection thereto and shall be duly notified as to the date of the
42 hearing of the petition. The District Attorney shall make his or her best efforts to contact
43 the victim, if any, to notify the victim of the request for expunction prior to the date of
44 the hearing.

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

4 (d) The court shall order that the person be restored, in the contemplation of the
5 law, to the status the person occupied before such arrest or indictment or information if
6 the court finds all of the following after a hearing:

7 (1) The petitioner has remained of good behavior and has been free of
8 conviction of any felony or misdemeanor, other than a traffic violation,
9 for two years from the date of conviction of the nonviolent felony in
10 question or any active sentence, period of probation, or post-release
11 supervision has been served, whichever is later.

12 (2) The petitioner has not previously been convicted of any felony or
13 misdemeanor other than a traffic violation under the laws of the United
14 States, the laws of this State, or any other state.

15 (3) The petitioner has no outstanding restitution orders or civil judgments
16 representing amounts ordered for restitution entered against him or
17 her.

18 (4) The petitioner was less than 18 years old at the time of the commission
19 of the offense in question.

20 (5) The petitioner has performed at least 100 hours of community service
21 since the time of the conviction and possesses a high school diploma
22 or high school graduation equivalency certificate or is attending a
23 program in pursuit of a General Education Development Degree or
24 adult high school diploma.

25 (6) The search of the confidential records of expunctions conducted by the
26 Administrative Office of the Courts shows that the petitioner has not
27 been previously granted an expunction.

28 No person as to whom such order has been entered shall be held thereafter under any
29 provision of any laws to be guilty of perjury or otherwise giving a false statement by
30 reason of his or her failure to recite or acknowledge such arrest, indictment,
31 information, trial, or conviction.

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

40 (f) Any other applicable State or local government agency shall expunge from its
41 records entries made as a result of the conviction ordered expunged under this section.
42 The agency shall also reverse any administrative actions taken against a person whose
43 record is expunged under this section as a result of the charges or convictions expunged.

1 This subsection shall not apply to the Department of Justice for DNA records and
2 samples stored in the State DNA Database and the State DNA Databank.

3 (g) The clerk of superior court in each county in North Carolina shall, as soon as
4 practicable after each term of court in the clerk's county, file with the Administrative
5 Office of the Courts the names of those persons granted a discharge under the
6 provisions of this section, and the Administrative Office of the Courts shall maintain a
7 confidential file containing the names of persons granted conditional discharges. The
8 information contained in the file shall be disclosed only to judges of the General Court
9 of Justice of North Carolina for the purpose of ascertaining whether any person charged
10 with an offense has been previously granted a discharge.

11 (h) Any person eligible for expunction of a criminal record under this section
12 shall be notified about the provisions of this section by the probation officer assigned to
13 that person. If no probation officer is assigned, notification of the provisions of this
14 section shall be provided by the court at the time of the conviction of the felony which
15 is to be expunged under this section.

16 (i) A person who files a petition for expunction of a criminal record under this
17 section must pay the clerk of superior court a fee of one hundred dollars (\$100.00) at the
18 time the petition is filed. Fees collected under this subsection shall be deposited in the
19 General Fund. This subsection does not apply to petitions filed by an indigent."

20 **SECTION 2.** This act becomes effective December 1, 2005, and expires
21 December 1, 2012.