

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005**

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SENATE DRS15094-LH-29A (1/24)

Short Title: Expunction/Convictions of Nonviolent Crimes.

(Public)

Sponsors: Senator Kinnaird.

Referred to:

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended
6 by adding a new section to read:
7 **§ 15A-149. Expunction of records for conviction of certain nonviolent criminal**
8 **offenses if there are no subsequent criminal convictions for at least 15**
9 **years**

10 (a) For purposes of this section, the term "nonviolent criminal offense" means a
11 misdemeanor, Class H felony, or Class I felony; however, the term does not include any
12 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.
- (4) An offense for which the offender was armed with or used a firearm.
- (5) An offense that is trafficking under G.S. 90-95(h).

20 (b) Whenever a person who has not previously been convicted of any felony or
21 misdemeanor other than a traffic violation under the laws of the United States, the laws
22 of this State, or any other state, pleads guilty to or is guilty of a nonviolent criminal
23 offense, the person may file a petition in the court where he or she was convicted for
24 expunction of the nonviolent criminal offense from the person's criminal record. The
25 petition cannot be filed earlier than 15 years after the date of the conviction or any
26 period of probation, whichever occurs later. The petition shall contain, but not be
27 limited to, the following:

- (1) An affidavit by the petitioner that he or she has been of good behavior for the 15-year period since the date of conviction of the nonviolent criminal offense 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 the person'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 resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the nonviolent criminal offense in question or during the 15-year period following that conviction.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.

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

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

(c) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for 15 years from the date of conviction of the nonviolent criminal offense in question and the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner, then the court shall order that the petitioner be restored, in the contemplation of the law, to the status the petitioner occupied before the arrest or indictment or information for the nonviolent criminal offense. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite or acknowledge such arrest, indictment, information, trial, or response to any inquiry made of the person for any purpose.

(d) The court shall also order that the conviction for the nonviolent criminal offense be expunged from the records of the court and direct all law enforcement agencies bearing record of the same to expunge their records of the conviction. The

1 clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
2 arresting agency. The sheriff, chief, or head of any other arresting agency shall then
3 transmit the copy of the order with a form supplied by the State Bureau of Investigation
4 to the State Bureau of Investigation, and the State Bureau of Investigation shall forward
5 the order to the Federal Bureau of Investigation.

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

15 (f) Upon receiving an order of expunction entered pursuant to subsection (c) of
16 this section, the SBI shall purge the DNA record and all other identifying information
17 from the State DNA Database and the DNA sample stored in the State DNA Databank
18 covered by the order, except that the order shall not apply to other offenses committed
19 by the individual that qualify for inclusion in the State DNA Database and the State
20 DNA Databank. A letter documenting expunction of the DNA record and destruction of
21 the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney
22 at the address specified by the court in the order of expunction.

23 (g) 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 name of those persons granted expunctions under the
26 provisions of this section, and the Administrative Office of the Courts shall maintain a
27 confidential file containing the name of persons granted expunctions. The information
28 contained in the file shall be disclosed only to judges of the General Court of Justice of
29 North Carolina for the purpose of ascertaining whether any person charged with an
30 offense has been previously granted an expunction.

31 (h) A person who files a petition for expunction of a criminal record under this
32 section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the
33 time the petition is filed. Fees collected under this subsection shall be deposited in the
34 General Fund. This subsection does not apply to petitions filed by an indigent."

35 **SECTION 2.** This act becomes effective December 1, 2005.