

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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SENATE BILL 559
Judiciary II Committee Substitute Adopted 4/26/05

Short Title: Expunction/Convictions of Nonviolent Crimes.

(Public)

Sponsors:

Referred to:

March 15, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES, TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, AND TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS.

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 conviction of certain nonviolent criminal offenses if there are no subsequent criminal convictions for at least 10 years.

(a) For purposes of this section, the term 'nonviolent criminal offense' means a misdemeanor, Class H felony, or Class I felony; however, the term does not include any 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).

(b) Whenever a 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 nonviolent criminal offense, the person may file a petition in the court where he or she was convicted for expunction of the nonviolent criminal offense from the person's criminal record. The petition cannot be filed earlier than 10 years after the date of the conviction, period of active sentence, period of post-release supervision, or period of probation has been

1 completed, whichever occurs later. The petition shall contain, but not be limited to, the
2 following:

- 3 (1) An affidavit by the petitioner that he or she has been of good behavior
4 for the 10-year period since the date of conviction of the nonviolent
5 criminal offense in question and has not been convicted of any felony
6 or misdemeanor other than a traffic violation under the laws of the
7 United States or the laws of this State or any other state.
- 8 (2) Verified affidavits of two persons who are not related to the petitioner
9 or to each other by blood or marriage, that they know the character and
10 reputation of the petitioner in the community in which the petitioner
11 lives, and that the person's character and reputation are good.
- 12 (3) A statement that the petition is a motion in the cause in the case
13 wherein the petitioner was convicted.
- 14 (4) An application on a form approved by the Administrative Office of the
15 Courts requesting and authorizing a State and national criminal record
16 check by the Department of Justice using any information required by
17 the Administrative Office of the Courts to identify the individual, and
18 a search of the confidential record of expungements maintained by the
19 Administrative Office of the Courts. The application shall be
20 forwarded to the Department of Justice and to the Administrative
21 Office of the Courts, which shall conduct the searches and report their
22 findings to the court.
- 23 (5) An affidavit by the petitioner that no restitution orders or civil
24 judgments representing amounts ordered for restitution entered against
25 the petitioner are outstanding.

26 The petition shall be served upon the district attorney of the court where the case
27 was tried resulting in conviction. The district attorney shall have 10 days to file any
28 objection to the petition and shall be notified as to the date of the hearing of the petition.

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

32 (c) If the court, after hearing, finds that the petitioner had remained of good
33 behavior and been free of conviction of any felony or misdemeanor, other than a traffic
34 violation, for 10 years from the date of conviction of the nonviolent criminal offense in
35 question and the petitioner has no outstanding restitution orders or civil judgments
36 representing amounts ordered for restitution entered against the petitioner, then the court
37 shall order that the petitioner be restored, in the contemplation of the law, to the status
38 the petitioner occupied before the arrest, indictment, conviction, or information for the
39 nonviolent criminal offense. No person as to whom such order has been entered shall be
40 held thereafter under any provision of any laws to be guilty of perjury or otherwise
41 giving a false statement by reason of his or her failure to recite or acknowledge such
42 arrest, indictment, conviction, information, trial, or response to any inquiry made of the
43 person for any purpose.

1 (d) The court shall also order that the conviction for the nonviolent criminal
2 offense be expunged from the records of the court and direct all law enforcement
3 agencies bearing record of the same to expunge their records of the conviction. The
4 clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
5 arresting agency. The sheriff, chief, or head of any other arresting agency shall then
6 transmit the copy of the order with a form supplied by the State Bureau of Investigation
7 to the State Bureau of Investigation, and the State Bureau of Investigation shall forward
8 the order to the Federal Bureau of Investigation. Expunction of records may occur only
9 once with respect to any person.

10 (e) Any other applicable State or local government agency shall expunge from its
11 records entries made as a result of the charge or conviction ordered expunged under this
12 section. The agency shall also reverse any administrative actions taken against a person
13 whose record is expunged under this section as a result of the charges or convictions
14 expunged. Notwithstanding any other provision of law, the normal fee for any
15 reinstatement of a license or privilege resulting under this section shall be waived.

16 (f) The clerk of superior court in each county in North Carolina shall, as soon as
17 practicable after each term of court in his or her county, file with the Administrative
18 Office of the Courts the names of those persons granted expunctions under the
19 provisions of this section, and the Administrative Office of the Courts shall maintain a
20 confidential file containing the names of persons granted expunctions. The information
21 contained in the file shall be disclosed only to judges of the General Court of Justice of
22 North Carolina for the purpose of ascertaining whether any person charged with an
23 offense has been previously granted an expunction.

24 (g) A person who files a petition for expunction of a criminal record under this
25 section must pay the clerk of superior court a fee of one hundred dollars (\$100.00) at the
26 time the petition is filed. Fifty dollars (\$50.00) of the fee collected under this subsection
27 shall be remitted to the North Carolina Department of Justice to pay the costs of the
28 State Bureau of Investigation purging records pursuant to receipt of an order of
29 expunction. The remaining fifty dollars (\$50.00) of the fee shall be remitted to the
30 Administrative Office of the Courts to pay the costs associated with implementation of
31 the provisions of this section. This subsection does not apply to petitions filed by an
32 indigent."

33 **SECTION 2.** G.S. 15A-145(a) reads as rewritten:

34 "(a) Whenever any person who has (i) not yet attained the age of 18 years and has
35 not previously been convicted of any felony, or misdemeanor other than a traffic
36 violation, under the laws of the United States, the laws of this State or any other state,
37 pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet
38 attained the age of 21 years and has not previously been convicted of any felony, or
39 misdemeanor other than a traffic violation, under the laws of the United States, the laws
40 of this State or any other state, pleads guilty to or is guilty of a misdemeanor possession
41 of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he
42 was convicted for expunction of the misdemeanor from his criminal record. The petition
43 cannot be filed earlier than two years after the date of the conviction or any period of

1 probation, whichever occurs later, and the petition shall contain, but not be limited to,
2 the following:

- 3 (1) An affidavit by the petitioner that he has been of good behavior for the
4 two-year period since the date of conviction of the misdemeanor in
5 question and has not been convicted of any felony, or misdemeanor
6 other than a traffic violation, under the laws of the United States or the
7 laws of this State or any other state.
- 8 (2) Verified affidavits of two persons who are not related to the petitioner
9 or to each other by blood or marriage, that they know the character and
10 reputation of the petitioner in the community in which he lives and that
11 his character and reputation are good.
- 12 (3) A statement that the petition is a motion in the cause in the case
13 wherein the petitioner was convicted.
- 14 (4) ~~Affidavits of the clerk of superior court, chief of police, where
15 appropriate, and sheriff of the county in which the petitioner was
16 convicted and, if different, the county of which the petitioner is a
17 resident, showing that the petitioner has not been convicted of a felony
18 or misdemeanor other than a traffic violation under the laws of this
19 State at any time prior to the conviction for the misdemeanor in
20 question or during the two-year period following that conviction.~~
- 21 (4) An application on a form approved by the Administrative Office of the
22 Courts requesting and authorizing a State and national criminal record
23 check by the Department of Justice using any information required by
24 the Administrative Office of the Courts to identify the individual, and
25 a search of the confidential record of expungements maintained by the
26 Administrative Office of the Courts. The application shall be
27 forwarded to the Department of Justice and to the Administrative
28 Office of the Courts which shall conduct the searches and report their
29 findings to the court.
- 30 (5) An affidavit by the petitioner that no restitution orders or civil
31 judgments representing amounts ordered for restitution entered against
32 him are outstanding.

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

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

40 **SECTION 3.** G.S. 15A-145 is amended by adding a new subsection to read:

41 "(c1) Any other applicable State or local government agency shall expunge from its
42 records entries made as a result of the charge or conviction ordered expunged under this
43 section. The agency shall also reverse any administrative actions taken against a person
44 whose record is expunged under this section as a result of the charges or convictions

1 expunged. Notwithstanding any other provision of law, the normal fee for any
2 reinstatement of a license or privilege resulting under this section shall be waived."

3 **SECTION 4.** G.S. 15A-146 is amended by adding a new subsection to read:

4 "(b3) Any other applicable State or local government agency shall expunge from its
5 records entries made as a result of the charge or conviction ordered expunged under this
6 section. The agency shall also reverse any administrative actions taken against a person
7 whose record is expunged under this section as a result of the charges or convictions
8 expunged. Notwithstanding any other provision of law, the normal fee for any
9 reinstatement of a license or privilege resulting under this section shall be waived."

10 **SECTION 5.** G.S. 90-96(b) reads as rewritten:

11 "(b) Upon the dismissal of such person, and discharge of the proceedings against
12 him under subsection (a) of this section, such person, if he were not over 21 years of age
13 at the time of the offense, may apply to the court for an order to expunge from all
14 official records (other than the confidential file to be retained by the Administrative
15 Office of the Courts under subsection (c)) all recordation relating to his arrest,
16 indictment or information, trial, finding of guilty, and dismissal and discharge pursuant
17 to this section. The applicant shall attach to the application the following:

18 (1) An affidavit by the applicant that he has been of good behavior during
19 the period of probation since the decision to defer further proceedings
20 on the offense in question and has not been convicted of any felony, or
21 misdemeanor, other than a traffic violation, under the laws of the
22 United States or the laws of this State or any other state;

23 (2) Verified affidavits by two persons who are not related to the applicant
24 or to each other by blood or marriage, that they know the character and
25 reputation of the petitioner in the community in which he lives, and
26 that his character and reputation are good;

27 ~~(3) Affidavits of the clerk of superior court, chief of police, where~~
28 ~~appropriate, and sheriff of the county in which the petitioner was~~
29 ~~convicted, and, if different, the county of which the petitioner is a~~
30 ~~resident, showing that the applicant has not been convicted of a felony~~
31 ~~or misdemeanor other than a traffic violation under the laws of this~~
32 ~~State at any time prior to the conviction for the offense in question or~~
33 ~~during the period of probation following the decision to defer further~~
34 ~~proceedings on the offense in question.~~

35 (3) An application on a form approved by the Administrative Office of the
36 Courts requesting and authorizing a State and national criminal record
37 check by the Department of Justice using any information required by
38 the Administrative Office of the Courts to identify the individual, and
39 a search of the confidential record of expungements maintained by the
40 Administrative Office of the Courts. The application shall be
41 forwarded to the Department of Justice and to the Administrative
42 Office of the Courts, which shall conduct the searches and report their
43 findings to the court.

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 probationary period deemed desirable.

4 If the court determines, after hearing, that such person was dismissed and the
5 proceedings against him discharged and that he was not over 21 years of age at the time
6 of the offense, it shall enter such order. The effect of such order shall be to restore such
7 person in the contemplation of the law to the status he occupied before such arrest or
8 indictment or information. No person as to whom such order was entered shall be held
9 thereafter under any provision of any law to be guilty of perjury or otherwise giving a
10 false statement by reason of his failures to recite or acknowledge such arrest, or
11 indictment or information, or trial in response to any inquiry made of him for any
12 purpose.

13 The court shall also order that said conviction and the records relating thereto be
14 expunged from the records of the court, and direct all law-enforcement agencies bearing
15 records of the same to expunge their records of the conviction. The clerk shall forward a
16 certified copy of the order to the sheriff, chief of police or other arresting agency, as
17 appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,
18 shall forward such order to the State Bureau of Investigation with a form supplied by
19 the State Bureau of Investigation. The State Bureau of Investigation shall forward the
20 court order in like manner to the Federal Bureau of Investigation."

21 **SECTION 6.** G.S. 90-113.14(b) reads as rewritten:

22 "(b) Upon the dismissal of such person, and discharge of the proceedings against
23 him under subsection (a) of this section, such person, if he were not over 21 years of age
24 at the time of the offense, may apply to the court for an order to expunge from all
25 official records (other than the confidential file to be retained by the Administrative
26 Office of the Courts under subsection (c)) all recordation relating to his arrest,
27 indictment or information, trial, finding of guilty, and dismissal and discharge pursuant
28 to this section. The applicant shall attach to the application the following:

- 29 (1) An affidavit by the applicant that he has been of good behavior during
30 the period of probation since the decision to defer further proceedings
31 on the misdemeanor in question and has not been convicted of any
32 felony, or misdemeanor, other than a traffic violation, under the laws
33 of the United States or the laws of this State or any other state;
- 34 (2) Verified affidavits by two persons who are not related to the applicant
35 or to each other by blood or marriage, that they know the character and
36 reputation of the petitioner in the community in which he lives, and
37 that his character and reputation are good;
- 38 ~~(3) Affidavits of the clerk of superior court, chief of police, where
39 appropriate, and sheriff of the county in which the petitioner was
40 convicted, and, if different, the county of which the petitioner is a
41 resident, showing that the applicant has not been convicted of a felony
42 or misdemeanor other than a traffic violation under the laws of this
43 State at any time prior to the conviction for the misdemeanor in~~

1 ~~question or during the period of probation following the decision to~~
2 ~~defer further proceedings on the misdemeanor in question.~~

3 (3) An application on a form approved by the Administrative Office of the
4 Courts requesting and authorizing a State and national criminal record
5 check by the Department of Justice using any information required by
6 the Administrative Office of the Courts to identify the individual, and
7 a search of the confidential record of expungements maintained by the
8 Administrative Office of the Courts. The application shall be
9 forwarded to the Department of Justice and to the Administrative
10 Office of the Courts, which shall conduct the searches and report their
11 findings to the court.

12 The judge to whom the petition is presented is authorized to call upon a probation
13 officer for any additional investigation or verification of the petitioner's conduct during
14 the probationary period deemed desirable.

15 If the court determines, after hearing, that such person was dismissed and the
16 proceedings against him discharged and that he was not over 21 years of age at the time
17 of the offense, it shall enter such order. The effect of such order shall be to restore such
18 person in the contemplation of the law to the status he occupied before such arrest or
19 indictment or information. No person as to whom such order was entered shall be held
20 thereafter under any provision of any law to be guilty of perjury or otherwise giving a
21 false statement by reason of his failures to recite or acknowledge such arrest, or
22 indictment or information, or trial in response to any inquiry made of him for any
23 purpose.

24 The court shall also order that said conviction and the records relating thereto be
25 expunged from the records of the court, and direct all law-enforcement agencies bearing
26 records of the same to expunge their records of the conviction. The clerk shall forward a
27 certified copy of the order to the sheriff, chief of police or other arresting agency, as
28 appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,
29 shall forward such order to the State Bureau of Investigation with a form supplied by
30 the State Bureau of Investigation. The State Bureau of Investigation shall forward the
31 court order in like manner to the Federal Bureau of Investigation."

32 **SECTION 7.** This act becomes effective December 1, 2005, and applies to
33 applications for expunction of records made on or after that date.