

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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SENATE BILL 397

Short Title: Expunge Nonviolent Offense by Minor. (Public)

Sponsors: Senators D. Berger, McKissick, Daniel; Atwater, Bingham, Blue, Dannelly, Forrester, Garrou, Goolsby, Graham, Hartsell, Jenkins, Jones, Kinnaird, Mansfield, Newton, Purcell, Robinson, Soucek, Vaughan, Walters, and White.

Referred to: Judiciary II.

March 23, 2011

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY BE EXPUNGED OF NONVIOLENT FELONIES BUT TO ALLOW THE CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS COMMISSION AND THE SHERIFFS' EDUCATION AND TRAINING STANDARDS COMMISSION ACCESS TO THE RECORDS OF EXPUNCTION.

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-145.4. 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.
- (4) A felony that is an offense that did not require registration under Article 27A of Chapter 14 of the General Statutes at the time of the commission of the offense but does require registration on the date the petition to expunge the offense would be filed.
- (5) A felony charged for any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.6, 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3A, 14-321.1.
- (6) Any felony offense charged pursuant to Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (7) A felony offense charged pursuant to G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense charged as a felony pursuant to G.S. 14-3(c).
- (8) A felony offense charged pursuant to G.S. 14-401.16.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to have occurred after the person had already been charged and arrested for the commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated as one nonviolent felony conviction under this section, and the expunction order issued



1 under this section shall provide that the multiple nonviolent felony convictions shall be
2 expunged from the person's record in accordance with this section.

3 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
4 commission of the offense and has not previously been convicted of any felony or
5 misdemeanor other than a traffic violation under the laws of the United States or the laws of
6 this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may
7 file a petition in the court where the person was convicted for expunction of the nonviolent
8 felony from the person's criminal record. The petition shall not be filed earlier than four years
9 after the date of the conviction or when any active sentence, period of probation, and
10 post-release supervision has been served, whichever occurs later. The person shall also perform
11 at least 100 hours of community service, preferably related to the conviction, before filing a
12 petition for expunction under this section. The petition shall contain the following:

13 (1) An affidavit by the petitioner that the petitioner has been of good moral
14 character since the date of conviction of the nonviolent felony in question
15 and has not been convicted of any other felony or any misdemeanor other
16 than a traffic violation under the laws of the United States or the laws of this
17 State or any other state.

18 (2) Verified affidavits of two persons who are not related to the petitioner or to
19 each other by blood or marriage, that they know the character and reputation
20 of the petitioner in the community in which the petitioner lives and that the
21 petitioner's character and reputation are good.

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

24 (4) An application on a form approved by the Administrative Office of the
25 Courts requesting and authorizing (i) a State and national criminal history
26 record check by the Department of Justice using any information required by
27 the Administrative Office of the Courts to identify the individual; (ii) a
28 search by the Department of Justice for any outstanding warrants or pending
29 criminal cases; and (iii) a search of the confidential record of expunctions
30 maintained by the Administrative Office of the Courts. The application shall
31 be forwarded to the Department of Justice and to the Administrative Office
32 of the Courts, which shall conduct the searches and report their findings to
33 the court.

34 (5) An affidavit by the petitioner that no restitution orders or civil judgments
35 representing amounts ordered for restitution entered against the petitioner
36 are outstanding.

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

41 (7) An affidavit by the petitioner that the petitioner possesses a high school
42 diploma, a high school graduation equivalency certificate, or a General
43 Education Development degree.

44 The petition shall be served upon the district attorney of the court wherein the case was
45 tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file
46 any objection thereto and shall be duly notified as to the date of the hearing of the petition. The
47 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
48 victim of the request for expunction prior to the date of the hearing.

49 (d) The court in which the petition was filed shall take the following steps and shall
50 consider the following issues in rendering a decision upon a petition for expunction of records
51 of a nonviolent felony under this section:

- 1 (1) Call upon a probation officer for additional investigation or verification of
2 the petitioner's conduct during the four-year period since the date of
3 conviction of the nonviolent felony in question.
- 4 (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile
5 records remain separate from adult records and files and are withheld from
6 public inspection as provided under Article 30 of Chapter 7B of the General
7 Statutes.
- 8 (3) Review the amount of restitution made by the petitioner to the victim of the
9 nonviolent felony to be expunged and give consideration to whether or not
10 restitution was paid in full.
- 11 (4) Review any other information the court deems relevant, including, but not
12 limited to, affidavits or other testimony provided by law enforcement
13 officers, district attorneys, and victims of nonviolent felonies committed by
14 the petitioner.

15 (e) The court may order that the person be restored, in the contemplation of the law, to
16 the status the person occupied before the arrest or indictment or information if the court finds
17 all of the following after a hearing:

- 18 (1) The petitioner has remained of good moral character and has been free of
19 conviction of any felony or misdemeanor, other than a traffic violation, for
20 four years from the date of conviction of the nonviolent felony in question or
21 any active sentence, period of probation, or post-release supervision has
22 been served, whichever is later.
- 23 (2) The petitioner has not previously been convicted of any felony or
24 misdemeanor other than a traffic violation under the laws of the United
25 States or the laws of this State or any other state.
- 26 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 27 (4) The petitioner has no outstanding restitution orders or civil judgments
28 representing amounts ordered for restitution entered against the petitioner.
- 29 (5) The petitioner was less than 18 years old at the time of the commission of
30 the offense in question.
- 31 (6) The petitioner has performed at least 100 hours of community service since
32 the time of the conviction and possesses a high school diploma, a high
33 school graduation equivalency certificate, or a General Education
34 Development degree.
- 35 (7) The search of the confidential records of expunctions conducted by the
36 Administrative Office of the Courts shows that the petitioner has not been
37 previously granted an expunction.

38 (f) No person as to whom an order has been entered pursuant to subsection (e) of this
39 section shall be held thereafter under any provision of any laws to be guilty of perjury or
40 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
41 the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the
42 provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all
43 felony convictions to the certifying Commission regardless of whether or not the felony
44 convictions were expunged pursuant to the provisions of this section.

45 Persons required by State law to obtain a criminal history record check on a prospective
46 employee shall not be deemed to have knowledge of any convictions expunged under this
47 section.

48 (g) The court shall also order that the nonviolent felony conviction be expunged from
49 the records of the court and direct all law enforcement agencies bearing record of the same to
50 expunge their records of the conviction. The clerk shall notify State and local agencies of the
51 court's order as provided in G.S. 15A-150.

1 (h) Any other applicable State or local government agency shall expunge from its
2 records entries made as a result of the conviction ordered expunged under this section. The
3 agency shall also reverse any administrative actions taken against a person whose record is
4 expunged under this section as a result of the charges or convictions expunged. This subsection
5 shall not apply to the Department of Justice for DNA records and samples stored in the State
6 DNA Database and the State DNA Databank.

7 (i) Any person eligible for expunction of a criminal record under this section shall be
8 notified about the provisions of this section by the probation officer assigned to that person. If
9 no probation officer is assigned, notification of the provisions of this section shall be provided
10 by the court at the time of the conviction of the felony which is to be expunged under this
11 section."

12 **SECTION 2.** G.S. 15A-151(a) reads as rewritten:

13 **"§ 15A-151. Confidential agency files; exceptions to expunction.**

14 (a) The Administrative Office of the Courts shall maintain a confidential file containing
15 the names of those people for whom it received a notice under G.S. 15A-150. The information
16 contained in the file may be disclosed only as follows:

- 17 (1) To a judge of the General Court of Justice of North Carolina for the purpose
18 of ascertaining whether a person charged with an offense has been
19 previously granted a discharge or an expunction.
- 20 (2) To a person requesting confirmation of the person's own discharge or
21 expunction, as provided in G.S. 15A-152.
- 22 (3) To the General Court of Justice of North Carolina in response to a subpoena
23 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 24 (4) If the criminal record was expunged pursuant to G.S. 15A-145.4, to State
25 and local law enforcement agencies for employment purposes only.
- 26 (5) If the criminal record was expunged pursuant to G.S. 15A-145.4, to the
27 North Carolina Criminal Justice Education and Training Standards
28 Commission for certification purposes only.
- 29 (6) If the criminal record was expunged pursuant to G.S. 15A-145.4, to the
30 North Carolina Sheriffs' Education and Training Standards Commission for
31 certification purposes only."

32 **SECTION 3.** G.S. 17C-13 reads as rewritten:

33 **"§ 17C-13. ~~Pardons.~~Pardons; expunctions.**

34 (a) When a person presents competent evidence that he has been granted an
35 unconditional pardon for a crime in this State, any other state, or the United States, the
36 Commission may not deny, suspend, or revoke that person's certification based solely on the
37 commission of that crime or for an alleged lack of good moral character due to the commission
38 of that crime.

39 (b) Notwithstanding G.S. 15A-145.4, the Commission may gain access to a person's
40 felony conviction records, including those maintained by the Administrative Office of the
41 Courts in its confidential files containing the names of persons granted expunctions. The
42 Commission may deny, suspend, or revoke a person's certification based solely on that person's
43 felony conviction, whether or not that conviction was expunged."

44 **SECTION 4.** G.S. 17E-12 reads as rewritten:

45 **"§ 17E-12. ~~Pardons.~~Pardons; expunctions.**

46 (a) When a person presents competent evidence that the person has been granted an
47 unconditional pardon of innocence for a crime in this State, any other state, or the United
48 States, the Commission may not deny, suspend, or revoke that person's certification based
49 solely on the commission of that crime or for alleged lack of good moral character due to the
50 commission of that crime.

1 **(b)** Notwithstanding G.S. 15A-145.4, the Commission may gain access to a person's
2 felony conviction records, including those maintained by the Administrative Office of the
3 Courts in its confidential files containing the names of persons granted expunctions. The
4 Commission may deny, suspend, or revoke a person's certification based solely on that person's
5 felony conviction, whether or not that conviction was expunged."

6 **SECTION 5.** This act becomes effective December 1, 2011.