

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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SENATE BILL 858*

Short Title: Amend Expunction Laws. (Public)

Sponsors: Senators Robinson (Primary Sponsor); Bryant, Foushee, and Van Duyn.

Referred to: Judiciary II.

May 28, 2014

A BILL TO BE ENTITLED

AN ACT TO AMEND THE EXPUNCTION LAWS TO SHORTEN THE WAITING PERIOD
REQUIRED TO OBTAIN SOME EXPUNCTIONS, TO MAKE SOME EXPUNCTIONS
MORE AVAILABLE FOR CERTAIN PERSONS DEDICATED TO MOVING BEYOND
THEIR CRIMINAL RECORDS, AND TO APPROPRIATE FUNDS TO THE
DEPARTMENT OF JUSTICE TO ASSIST WITH THE ADDITIONAL COSTS OF
CRIMINAL RECORD CHECKS.

The General Assembly of North Carolina enacts:

SECTION 1. G.S 15A-145.5(c) reads as rewritten:

"(c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic violation. The A petition for expunction of a nonviolent felony shall not be filed earlier than 15 years than (i) 10 years after the date of the conviction or when conviction or (ii) the completion of any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. A petition for expunction of a nonviolent misdemeanor shall not be filed earlier than (i) five years after the date of a conviction or (ii) the completion of any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other 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 petitioner'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) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Justice for any outstanding warrants on pending criminal cases, and a search of the confidential record



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1 of expunctions maintained by the Administrative Office of the Courts. The
2 application shall be forwarded to the Department of Justice and to the
3 Administrative Office of the Courts, which shall conduct the searches and
4 report their findings to the court.

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

8 Upon filing of the petition, the petition shall be served upon the district attorney of the court
9 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
10 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
11 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
12 additional 30 days to file objection to the petition. The district attorney shall make his or her
13 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
14 to the date of the hearing.

15 The presiding judge is authorized to call upon a probation officer for any additional
16 investigation or verification of the petitioner's conduct since the conviction. The court shall
17 review any other information the court deems relevant, including, but not limited to, affidavits
18 or other testimony provided by law enforcement officers, district attorneys, and victims of
19 crimes committed by the petitioner.

20 ~~If the court, after hearing, finds that~~ The court may order an expunction and that the person
21 be restored in the contemplation of the law to the status the person occupied before such arrest
22 or indictment or information if the court finds all of the following: the petitioner has not
23 previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1,
24 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the
25 petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other
26 felony or misdemeanor convictions other than a traffic violation; the petitioner has no
27 outstanding restitution orders or civil judgments representing amounts ordered for restitution
28 entered against the petitioner; ~~and the petitioner was convicted of an offense eligible for~~
29 ~~expunction under this section and was convicted of, and completed any sentence received for,~~
30 ~~the nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the~~
31 ~~petition,~~ section; and if convicted of a nonviolent felony, the petition was not filed any earlier
32 than 10 years after the date of conviction or the completion of any active sentence, period of
33 probation, and post-release supervision, whichever occurs later, or if convicted of a nonviolent
34 misdemeanor, the petition was not filed any earlier than five years after the date of conviction
35 or the completion of any active sentence, period of probation, and post-release supervision,
36 whichever occurs later. ~~it may order that such person be restored, in the contemplation of the~~
37 ~~law, to the status the person occupied before such arrest or indictment or information.~~ ~~If the~~
38 court denies the petition, the order shall include a finding as to the reason for the denial."

39 **SECTION 2.** G.S. 15A-146 reads as rewritten:

40 **"§ 15A-146. Expunction of records when charges are dismissed or there are findings of**
41 **not guilty.**

42 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
43 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
44 dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the
45 court of the county where the charge was brought for an order to expunge from all official
46 records any entries relating to his apprehension or trial. The court shall hold a hearing on the
47 ~~application and, upon finding that the person had not previously received an expungement~~
48 ~~under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or~~
49 ~~15A-145.5, and that the person had not previously been convicted of any felony under the laws~~
50 ~~of the United States, this State, or any other state,~~ application, and the court shall order the
51 expunction. No person as to whom such an order has been entered shall be held thereafter

1 under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a
2 false statement or response to any inquiry made for any purpose, by reason of his failure to
3 recite or acknowledge any expunged entries concerning apprehension or trial.

4 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
5 offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,
6 then a person may apply to have each of those charges ~~expunged if the offenses occurred within~~
7 ~~the same 12-month period of time or if the charges are dismissed or findings are made at the~~
8 ~~same term of court. expunged. Unless circumstances otherwise clearly provide, the phrase~~
9 ~~"term of court" shall mean one week for superior court and one day for district court. There is~~
10 ~~no requirement that the multiple offenses arise out of the same transaction or occurrence or that~~
11 ~~the multiple offenses were consolidated for judgment. The court shall hold a hearing on the~~
12 ~~application. If the court finds (i) that the person had not previously received an expungement~~
13 ~~under this subsection, or that any previous expungement received under this subsection~~
14 ~~occurred prior to October 1, 2005 and was for an offense that occurred within the same~~
15 ~~12-month period of time, or was dismissed or findings made at the same term of court, as the~~
16 ~~offenses that are the subject of the current application, (ii) that the person had not previously~~
17 ~~received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4,~~
18 ~~or 15A-145.5, and (iii) that the person had not previously been convicted of any felony under~~
19 ~~the laws of the United States, this State, or any other state, the court shall order the expunction.~~
20 The court shall hold a hearing on the applications and shall order the expunctions. No person as
21 to whom such an order has been entered shall be held thereafter under any provision of any law
22 to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any
23 inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged
24 entries concerning apprehension or trial.

25"

26 **SECTION 3.** G.S. 15A-145.5(a)(5) is repealed.

27 **SECTION 4.** G.S. 15A-145.2(c) reads as rewritten:

28 "(c) Whenever any person who has not previously been convicted of (i) any felony
29 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
30 Statutes; or (iii) an offense under any statute of the United States or any state relating to
31 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that
32 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
33 has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes
34 by possessing a controlled substance included within Schedules I through VI of Chapter 90, or
35 by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has
36 been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the
37 person not sooner than 12 months after conviction, order cancellation of the judgment of
38 conviction and expunction of the records of the person's arrest, indictment or information, trial,
39 and conviction. A conviction in which the judgment of conviction has been canceled and the
40 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for
41 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
42 upon conviction of a crime, including the additional penalties imposed for second or
43 subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and
44 expunction under this subsection may occur only once with respect to any person. Disposition
45 of a case under this subsection at the district court division of the General Court of Justice shall
46 be final for the purpose of appeal.

47 The granting of an application filed under this subsection shall cause the issue of an order to
48 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
49 all recordation relating to the petitioner's arrest, indictment or information, trial, finding of
50 guilty, judgment of conviction, cancellation of the judgment, and expunction of records
51 pursuant to this subsection.

1 The judge to whom the petition is presented is authorized to call upon a probation officer
2 for additional investigation or verification of the petitioner's conduct since conviction. If the
3 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
4 Chapter 90 of the General Statutes for possessing a controlled substance included within
5 Schedules I through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
6 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3), that
7 the petitioner has no disqualifying previous convictions as set forth in this subsection, that the
8 petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of
9 good behavior since his or her conviction, that the petitioner has successfully completed a drug
10 education program approved for this purpose by the Department of Health and Human
11 Services, and that the petitioner has not been convicted of a felony or misdemeanor other than a
12 traffic violation under the laws of this State at any time prior to or since the conviction for the
13 offense in question, it shall enter an order of expunction of the petitioner's court record. The
14 effect of such order shall be to restore the petitioner in the contemplation of the law to the
15 status the petitioner occupied before arrest or indictment or information or conviction. No
16 person as to whom such order was entered shall be held thereafter under any provision of any
17 law to be guilty of perjury or otherwise giving a false statement by reason of the person's
18 failures to recite or acknowledge such arrest, or indictment or information, or conviction, or
19 trial in response to any inquiry made of him or her for any purpose. The judge may waive the
20 condition that the petitioner attend the drug education school if the judge makes a specific
21 finding that there was no drug education school within a reasonable distance of the defendant's
22 residence or that there were specific extenuating circumstances which made it likely that the
23 petitioner would not benefit from the program of instruction.

24 The court shall also order all law enforcement agencies, the Department of Correction, the
25 Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as
26 bearing records of the conviction and records relating thereto to expunge their records of the
27 conviction. The clerk shall notify State and local agencies of the court's order as provided in
28 G.S. 15A-150.

29 The provisions of this subsection shall apply retroactively."

30 **SECTION 5.** G.S. 15A-173.2(a) reads as rewritten:

31 "(a) An individual who is convicted of no more than two Class G, H, or I felonies or
32 misdemeanors in one session of court, and who has no other convictions for a ~~felony or~~
33 ~~misdemeanor other than a traffic violation, felony,~~ may petition the court where the individual
34 was convicted for a Certificate of Relief relieving collateral consequences as permitted by this
35 Article. Except as otherwise provided in this subsection, the petition shall be heard by the
36 senior resident superior court judge if the convictions were in superior court, or the chief
37 district court judge if the convictions were in district court. The senior resident superior court
38 judge and chief district court judge in each district may delegate their authority to hold hearings
39 and issue, modify, or revoke Certificates of Relief to judges, clerks, or magistrates in that
40 district."

41 **SECTION 6.** There is appropriated from the General Fund to the Department of
42 Justice the sum of two hundred fifty thousand dollars (\$250,000) for the 2014-2015 fiscal year
43 to be used to assist with the additional costs of criminal record checks.

44 **SECTION 7.** Sections 6 and 7 of this act become effective July 1, 2014. The
45 remainder of this act becomes effective December 1, 2014.