

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

S

2

SENATE BILL 1081
Judiciary I (Civil) Committee Substitute Adopted 7/18/07

Short Title: Expunge Nonviolent Crimes.

(Public)

Sponsors:

Referred to:

March 22, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN NONVIOLENT CRIMINAL OFFENSES UPON APPLICATION AND A FEE, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT AGENCIES AND OTHER SPECIFIED AGENCIES FOR EMPLOYMENT AND LICENSING PURPOSES AND TO REQUIRE THOSE AGENCIES TO MAINTAIN THE CONFIDENTIALITY OF THE EXPUNGED INFORMATION, AND TO MAKE CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES.

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-150. Expunction of records for conviction of certain nonviolent criminal offenses.

(a) A person may file a petition in the court where the person was convicted for expunction of a felony conviction from the person's criminal record if all of the following criteria are met:

(1) The person, at the time of the felony offense, had 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.

(2) The conviction is for a felony violation of any of the following:

a. G.S. 14-54.

b. G.S. 14-56.

c. G.S. 14-71.1.

d. G.S. 14-100 where the thing of value is less than one hundred thousand dollars (\$100,000).

e. G.S. 90-95(d)(4).

1 (3) The person, at the time of the petition, has no convictions other than
2 the conviction to be expunged and traffic violations under the laws of
3 the United States, the laws of this State, or any other state.

4 (b) The petition may not be filed earlier than 10 years after the date of the felony
5 conviction or when any active sentence, period of probation, and post-release
6 supervision has been served, whichever occurs later. The petition shall contain all of the
7 following:

8 (1) An affidavit by the petitioner stating all of the following:

9 a. That the petitioner has been of good moral character for the
10 10-year period since the date of the felony conviction in
11 question.

12 b. That the petitioner had not been convicted of any other felony
13 or any misdemeanor other than a traffic violation under the laws
14 of the United States or the laws of this State or any other state.

15 c. That the petition has no restitution orders or civil judgments
16 representing amounts ordered for restitution entered against the
17 petitioner outstanding.

18 (2) Verified affidavits of two persons, who are not related to the petitioner
19 or to each other by blood or marriage and were not involved in the
20 actions giving rise to the felony conviction in question, that:

21 a. The person knows the character and reputation of the petitioner
22 in the community in which the petitioner lives.

23 b. The petitioner's character and reputation are good.

24 c. The petitioner is and has been of good moral character for the
25 10-year period since the date of the felony conviction in
26 question.

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

29 (4) An application on a form approved by the Administrative Office of the
30 Courts requesting and authorizing all of the following:

31 a. A State and national criminal record check by the Department
32 of Justice using any information required by the Administrative
33 Office of the Courts to identify the individual.

34 b. A search by the Department of Justice for any outstanding
35 warrants or pending criminal cases.

36 c. A search of the confidential record of expunctions maintained
37 by the Administrative Office of the Courts.

38 (c) The petition shall be served upon the district attorney of the court wherein the
39 case was tried resulting in conviction. The district attorney shall have 30 days thereafter
40 in which to file any objection to the petition and shall be duly notified as to the date of
41 the hearing on the petition. The district attorney shall make his or her best efforts to
42 contact the victim, if any, to notify the victim of the request for expunction prior to the
43 date of the hearing. The application required by subsection (b)(4) of this section shall be

1 forwarded to the Department of Justice and to the Administrative Office of the Courts,
2 which shall conduct the searches and report their findings to the court.

3 (d) The court in which the petition was filed may take any of the following steps
4 and may consider at least the following issues in rendering a decision upon a petition for
5 expunction of records of a felony conviction under this section:

6 (1) Call upon a probation officer for additional investigation or
7 verification of the petitioner's conduct during the 10-year period since
8 the date of conviction of the felony conviction in question.

9 (2) Review the results of the State and national criminal record check by
10 the Department of Justice and Administrative Office of the Courts.

11 (3) Review the amount of restitution, if any, made by the petitioner to the
12 victim of the felony conviction to be expunged and give consideration
13 to whether or not restitution was paid in full.

14 (4) Review any other information the court deems relevant, including
15 affidavits or other testimony provided by law enforcement officers,
16 district attorneys, and victims of the felony committed by the
17 petitioner.

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

21 (1) The petitioner has remained of good moral character 10 ten years from
22 the date of conviction of the felony in question or any active sentence,
23 period of probation, or post-release supervision has been served,
24 whichever is later.

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

28 (3) The petitioner has no outstanding warrants or pending criminal cases.

29 (4) The petitioner has no outstanding restitution orders or civil judgments
30 representing amounts ordered for restitution entered against the
31 petitioner.

32 (5) The search of the confidential records of expunctions conducted by the
33 Administrative Office of the Courts shows that the petitioner has not
34 been previously granted an expunction.

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

42 (g) The court shall also order that the felony conviction be expunged from the
43 records of the court and direct all law enforcement agencies bearing record of the same
44 to expunge that agency's records of the felony conviction. The clerk shall forward a

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

6 (h) A person as to whom an order has been entered pursuant to subsection (e) of
7 this section may notify any other applicable State or local government agency of the
8 order, and that State or local government agency shall expunge from its records entries
9 made as a result of the conviction ordered expunged under this section. The person may
10 also request that the State or local government agency reverse any administrative
11 actions taken against that person as a result of the charges or convictions expunged.
12 This subsection shall not apply to the Department of Justice for DNA records and
13 samples stored in the State DNA Database and the State DNA Databank.

14 (i) The clerk of superior court in each county in North Carolina shall, as soon as
15 practicable after each term of court in the clerk's county, file with the Administrative
16 Office of the Courts the names of those persons granted expunctions under this section,
17 and the Administrative Office of the Courts shall maintain a confidential file containing
18 the names of persons granted expunctions. The information contained in the file shall be
19 disclosed only as follows:

- 20 (1) To judges of the General Court of Justice of North Carolina for the
21 purpose of ascertaining whether any person charged with an offense
22 has been previously granted a discharge.
- 23 (2) To federal, State, and local law enforcement agencies for employment
24 purposes only.
- 25 (3) To the North Carolina Criminal Justice Education and Training
26 Standards Commission for certification purposes only.
- 27 (4) To the North Carolina Sheriffs' Education and Training Standards
28 Commission for certification purposes only.
- 29 (5) To federally insured depository institutions for employment purposes
30 only.
- 31 (6) To the North Carolina State Bar and the Board of Law Examiners for
32 licensing purposes only.
- 33 (7) To the North Carolina State Board of Certified Public Accountant
34 Examiners for licensing purposes only.
- 35 (8) To local boards of education for employment purposes only.
- 36 (9) To the Department of Health and Human Services for licensing
37 purposes and placement purposes if a criminal history check is
38 mandated for the license or placement.

39 (j) A person who files a petition for expunction of a criminal record under this
40 section must pay the clerk of superior court a fee of two hundred dollars (\$200.00) at
41 the time the petition is filed. One hundred dollars (\$100.00) of the fee collected under
42 this subsection shall be remitted to the North Carolina Department of Justice to pay the
43 costs of the State Bureau of Investigation purging records pursuant to receipt of an order
44 of expunction. The remaining one hundred dollars (\$100.00) of the fee shall be remitted

1 to the Administrative Office of the Courts to pay the costs associated with
2 implementation of the provisions of this section. This subsection does not apply to
3 petitions filed by an indigent."

4 **SECTION 2.** G.S. 17C-13 reads as rewritten:

5 **"§ 17C-13. Pardons.**

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

11 (b) Notwithstanding G.S. 15A-150, the Commission may gain access to a
12 person's felony conviction records, including those maintained by the Administrative
13 Office of the Courts in its confidential files containing the names of persons granted
14 expunctions. The Commission may deny, suspend, or revoke a person's certification
15 based solely on that person's felony conviction, whether or not the felony conviction
16 was expunged."

17 **SECTION 3.** G.S. 17E-12 reads as rewritten:

18 **"§ 17E-12. Pardons.**

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

24 (b) Notwithstanding G.S. 15A-150, the Commission may gain access to a
25 person's felony conviction records, including those maintained by the Administrative
26 Office of the Courts in its confidential files containing the names of persons granted
27 expunctions. The Commission may deny, suspend, or revoke a person's certification
28 based solely on that person's felony conviction, whether or not the felony conviction
29 was expunged."

30 **SECTION 4.** This act becomes effective December 1, 2007, and applies to
31 applications for expunction of records made on or after that date.