

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 1336

Short Title: Expunge Nonviolent Crimes/Young Person. (Public)

Sponsors: Senators Kinnaird; Atwater, Berger of Franklin, Bingham, and Graham.

Referred to: Judiciary I (Civil).

March 26, 2007

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR
3 CERTAIN NONVIOLENT CRIMINAL OFFENSES IF THE PERSON WAS
4 SEVENTEEN TO TWENTY-ONE YEARS OF AGE AT THE TIME OF THE
5 CONVICTION, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION
6 TO LAW ENFORCEMENT AGENCIES AND FEDERALLY INSURED
7 DEPOSITORY INSTITUTIONS FOR EMPLOYMENT PURPOSES ONLY AND
8 TO REQUIRE THOSE AGENCIES AND INSTITUTIONS TO MAINTAIN THE
9 CONFIDENTIALITY OF THE EXPUNGED INFORMATION, TO MAKE
10 CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, TO
11 INCREASE THE FEES FOR EXPUNCTIONS, AND TO REQUIRE STATE AND
12 NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended
15 by adding a new section to read:

16 **"§ 15A-150. Expunction of records for conviction of certain nonviolent criminal**
17 **offenses committed by a young person if there are no subsequent**
18 **criminal convictions for at least 10 years.**

19 (a) The following definitions apply in this section:

20 (1) Nonviolent criminal offense. – A misdemeanor, Class H felony, or
21 Class I felony; however, the term does not include any of the
22 following:

23 a. An offense that includes assault as an essential element of the
24 offense.

25 b. An offense for which the offender must register under Article
26 27A of Chapter 14 of the General Statutes.

27 c. An offense that includes the possession or use of a firearm as an
28 essential element of the offense or is used as an aggravating
29 factor in sentencing.

1 d. An offense that is trafficking under G.S. 90-95(h).

2 e. An offense that involves impaired driving.

3 (2) Young person. – A person who is 17, 18, 19, 20 or 21 years of age.

4 (b) A person who was convicted as a young person of a nonviolent criminal
5 offense, and who has not been convicted of any felony or misdemeanor other than the
6 nonviolent criminal offense or a traffic violation under the laws of the United States, the
7 laws of this State, or any other state, has no outstanding warrants or pending criminal
8 cases, and has not previously obtained an expunction under this section, may file a
9 petition in the court where he or she was convicted as a young person for expunction of
10 the nonviolent criminal offense from the person's criminal record. The petition cannot
11 be filed earlier than 10 years after the date of the conviction, period of active sentence,
12 period of post-release supervision, or period of probation has been completed,
13 whichever occurs later. The petition shall contain, but not be limited to, the following:

14 (1) An affidavit by the petitioner that the petitioner was a young person at
15 the time of the conviction, has been of good behavior for the 10-year
16 period since the date of conviction of the nonviolent criminal offense
17 in question, has not been convicted of any felony or misdemeanor
18 other than a traffic violation under the laws of the United States or the
19 laws of this State or any other state, has no outstanding warrants or
20 pending criminal cases, and has not previously obtained an expunction
21 under this section.

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

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

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

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

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

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

4 (c) If the court, after hearing, finds that the petitioner was a young person at the
5 time he or she was convicted of the nonviolent criminal offense, the petitioner has
6 remained of good behavior and been free of conviction of any felony or misdemeanor,
7 other than a traffic violation, for 10 years from the date of conviction of the nonviolent
8 criminal offense in question, the petitioner has not previously obtained an expunction
9 under this section, the petitioner has no outstanding warrants or pending criminal cases,
10 and the petitioner has no outstanding restitution orders or civil judgments representing
11 amounts ordered for restitution entered against the petitioner, then the court shall order
12 that the petitioner be restored, in the contemplation of the law, to the status the
13 petitioner occupied before the arrest, indictment, conviction, or information for the
14 nonviolent criminal offense. No person as to whom such order has been entered shall be
15 held thereafter under any provision of any laws to be guilty of perjury or otherwise
16 giving a false statement by reason of his or her failure to recite or acknowledge such
17 arrest, indictment, conviction, information, trial, or response to any inquiry made of the
18 person for any purpose.

19 (d) The court shall also order that the conviction for the nonviolent criminal
20 offense be expunged from the records of the court and direct all law enforcement
21 agencies bearing record of the same to expunge their records of the conviction. The
22 clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
23 arresting agency. The sheriff, chief, or head of any other arresting agency shall then
24 transmit the copy of the order with a form supplied by the State Bureau of Investigation
25 to the State Bureau of Investigation, and the State Bureau of Investigation shall forward
26 the order to the Federal Bureau of Investigation. Expunction of records under this
27 section may occur only once with respect to any person.

28 (e) The clerk of superior court in each county in North Carolina shall, as soon as
29 practicable after each term of court in his or her county, file with the Administrative
30 Office of the Courts the names of those persons granted expunctions under the
31 provisions of this section and the offenses for which the expunctions were granted, and
32 the Administrative Office of the Courts shall maintain a confidential file containing the
33 names of persons granted expunctions and the offenses for which the expunctions were
34 granted. The information contained in the file shall be disclosed only as follows:

- 35 (1) To judges of the General Court of Justice of North Carolina for the
36 purpose of ascertaining whether any person charged with an offense
37 has been previously granted an expunction.
38 (2) To State and local law enforcement agencies for employment purposes
39 only.
40 (3) To federally insured depository institutions for employment purposes
41 only.

42 (f) A person who knowingly and willfully discloses or uses in an unauthorized
43 manner information obtained under subsection (e) of this section, except as otherwise
44 permitted by that subsection, is guilty of a Class 3 misdemeanor.

1 (g) A person who files a petition for expunction of a criminal record under this
2 section must pay the clerk of superior court a fee of two hundred dollars (\$200.00) at
3 the time the petition is filed. One hundred dollars (\$100.00) of the fee collected under
4 this subsection shall be remitted to the North Carolina Department of Justice to pay the
5 costs of the State Bureau of Investigation purging records pursuant to receipt of an order
6 of expunction. The remaining one hundred dollars (\$100.00) of the fee shall be remitted
7 to the Administrative Office of the Courts to pay the costs associated with
8 implementation of the provisions of this section. This subsection does not apply to
9 petitions filed by an indigent."

10 **SECTION 2.** G.S. 15A-145 reads as rewritten:

11 **"§ 15A-145. Expunction of records for first offenders under the age of 18 at the**
12 **time of conviction of misdemeanor; expunction of certain other**
13 **misdemeanors.**

14 (a) Whenever any person who has not previously obtained an expunction under
15 this section and has (i) not yet attained the age of 18 years and has not previously been
16 convicted of any felony, or misdemeanor other than a traffic violation, under the laws of
17 the United States, the laws of this State or any other state, pleads guilty to or is guilty of
18 a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years
19 and has not previously been convicted of any felony, or misdemeanor other than a
20 traffic violation, under the laws of the United States, the laws of this State or any other
21 state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to
22 G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for
23 expunction of the misdemeanor from his criminal record. The petition cannot be filed
24 earlier than two years after the date of the conviction or any period of probation,
25 whichever occurs later, and the petition shall contain, but not be limited to, the
26 following:

27 (1) An affidavit by the petitioner that he has not previously obtained an
28 expunction under this section and that he has been of good behavior
29 for the two-year period since the date of conviction of the
30 misdemeanor in question and has not been convicted of any felony, or
31 misdemeanor other than a traffic violation, under the laws of the
32 United States or the laws of this State or any other state.

33 (2) Verified affidavits of two persons who are not related to the petitioner
34 or to each other by blood or marriage, that they know the character and
35 reputation of the petitioner in the community in which he lives and that
36 his character and reputation are good.

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

39 ~~(4) Affidavits of the clerk of superior court, chief of police, where~~
40 ~~appropriate, and sheriff of the county in which the petitioner was~~
41 ~~convicted and, if different, the county of which the petitioner is a~~
42 ~~resident, showing that the petitioner has not been convicted of a felony~~
43 ~~or misdemeanor other than a traffic violation under the laws of this~~

1 ~~State at any time prior to the conviction for the misdemeanor in~~
2 ~~question or during the two-year period following that conviction.~~

3 (4) 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 expunctions 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 (5) An affidavit by the petitioner that no restitution orders or civil
13 judgments representing amounts ordered for restitution entered against
14 him are outstanding.

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

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

22 (b) If the court, after hearing, finds that the petitioner ~~had~~has not previously
23 obtained an expunction under this section, the petitioner has remained of good behavior
24 and been free of conviction of any felony or misdemeanor, other than a traffic violation,
25 for two years from the date of conviction of the misdemeanor in question, the petitioner
26 has no outstanding restitution orders or civil judgments representing amounts ordered
27 for restitution entered against him, and (i) petitioner was not 18 years old at the time of
28 the conviction in question, or (ii) petitioner was not 21 years old at the time of the
29 conviction of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that
30 such person be restored, in the contemplation of the law, to the status he occupied
31 before such arrest or indictment or information. No person as to whom such order has
32 been entered shall be held thereafter under any provision of any laws to be guilty of
33 perjury or otherwise giving a false statement by reason of his failure to recite or
34 acknowledge such arrest, or indictment, information, or trial, or response to any inquiry
35 made of him for any purpose.

36 (c) The court shall also order that the said misdemeanor conviction be expunged
37 from the records of the court, and direct all law-enforcement agencies bearing record of
38 the same to expunge their records of the conviction. The clerk shall forward a certified
39 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,
40 chief or head of such other arresting agency shall then transmit the copy of the order
41 with a form supplied by the State Bureau of Investigation to the State Bureau of
42 Investigation, and the State Bureau of Investigation shall forward the order to the
43 Federal Bureau of Investigation.

1 (d) The clerk of superior court in each county in North Carolina shall, as soon as
2 practicable after each term of court in his county, file with the Administrative Office of
3 the Courts, the names of those persons granted a discharge under the provisions of this
4 section, and the Administrative Office of the Courts shall maintain a confidential file
5 containing the names of persons granted conditional discharges. The information
6 contained in such file shall be disclosed only to judges of the General Court of Justice of
7 North Carolina for the purpose of ascertaining whether any person charged with an
8 offense has been previously granted a discharge.

9 (e) A person who files a petition for expunction of a criminal record under this
10 section must pay the clerk of superior court a fee of ~~one hundred twenty five dollars~~
11 ~~(\$125.00)~~ two hundred dollars (\$200.00) at the time the petition is filed. ~~Fees collected~~
12 ~~under this subsection shall be deposited in the General Fund.~~ One hundred dollars
13 (\$100.00) of the fee collected under this subsection shall be remitted to the North
14 Carolina Department of Justice to pay the costs of the State Bureau of Investigation
15 purging records pursuant to receipt of an order of expunction. The remaining one
16 hundred dollars (\$100.00) of the fee shall be remitted to the Administrative Office of
17 the Courts to pay the costs associated with implementation of the provisions of this
18 section. This subsection does not apply to petitions filed by an indigent."

19 **SECTION 3.** G.S. 90-96(b) reads as rewritten:

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

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

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

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

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

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

30 **SECTION 4.** G.S. 90-96(f) reads as rewritten:

31 "(f) 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)~~ two
33 hundred dollars (\$200.00) at the time the petition is filed. ~~Fees collected under this~~
34 ~~subsection shall be deposited in the General Fund.~~ One hundred dollars (\$100.00) of the
35 fee collected under this subsection shall be remitted to the North Carolina Department
36 of Justice to pay the costs of the State Bureau of Investigation purging records pursuant
37 to receipt of an order of expunction. The remaining one hundred dollars (\$100.00) of the
38 fee shall be remitted to the Administrative Office of the Courts to pay the costs
39 associated with implementation of the provisions of this section. This subsection does
40 not apply to petitions filed by an indigent."

41 **SECTION 5.** G.S. 90-113.14(b) reads as rewritten:

42 "(b) Upon the dismissal of such person, and discharge of the proceedings against
43 him under subsection (a) of this section, such person, if he were not over 21 years of age
44 at the time of the offense, may apply to the court for an order to expunge from all

1 official records (other than the confidential file to be retained by the Administrative
2 Office of the Courts under subsection (c)) all recordation relating to his arrest,
3 indictment or information, trial, finding of guilty, and dismissal and discharge pursuant
4 to this section. The applicant shall attach to the application the following:

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

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

14 ~~(3) 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 applicant 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 period of probation following the decision to
21 defer further proceedings on the misdemeanor in question.~~

22 (3) An application on a form approved by the Administrative Office of the
23 Courts requesting and authorizing a State and national criminal record
24 check by the Department of Justice using any information required by
25 the Administrative Office of the Courts to identify the individual and a
26 search of the confidential record of expunctions maintained by the
27 Administrative Office of the Courts. The application shall be
28 forwarded to the Department of Justice and to the Administrative
29 Office of the Courts, which shall conduct the searches and report their
30 findings to the court.

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

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

43 The court shall also order that said conviction and the records relating thereto be
44 expunged from the records of the court, and direct all law-enforcement agencies bearing

1 records of the same to expunge their records of the conviction. The clerk shall forward a
2 certified copy of the order to the sheriff, chief of police or other arresting agency, as
3 appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,
4 shall forward such order to the State Bureau of Investigation with a form supplied by
5 the State Bureau of Investigation. The State Bureau of Investigation shall forward the
6 court order in like manner to the Federal Bureau of Investigation."

7 **SECTION 6.** G.S. 90-113.14 is amended by adding a new subsection to
8 read:

9 "(f) A person who files a petition for expunction of a criminal record under this
10 section must pay the clerk of superior court a fee of two hundred dollars (\$200.00) at
11 the time the petition is filed. One hundred dollars (\$100.00) of the fee collected under
12 this subsection shall be remitted to the North Carolina Department of Justice to pay the
13 costs of the State Bureau of Investigation purging records pursuant to receipt of an order
14 of expunction. The remaining one hundred dollars (\$100.00) of the fee shall be remitted
15 to the Administrative Office of the Courts to pay the costs associated with
16 implementation of the provisions of this section. This subsection does not apply to
17 petitions filed by an indigent."

18 **SECTION 7.** This act becomes effective December 1, 2007, and applies to
19 applications for expunction of records made on or after that date.