

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1064\*

Short Title: Expunge Nonviolent Crimes. (Public)

Sponsors: Representatives Hall, Bordsen, Crawford, Bryant (Primary Sponsors); Adams, M. Alexander, Bell, Blue, Brisson, Cotham, Earle, England, Farmer-Butterfield, Fisher, E. Floyd, Harrison, Holliman, Hughes, Insko, Jackson, Jones, Love, Lucas, Luebke, Mackey, Parmon, Pierce, Rapp, Wainwright, Weiss, Wilkins, and Womble.

Referred to: Judiciary I, if favorable, Finance.

April 6, 2009

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN  
3 NONVIOLENT CRIMINAL OFFENSES UPON APPLICATION AND A FEE, TO  
4 ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT  
5 AGENCIES AND OTHER SPECIFIED AGENCIES FOR EMPLOYMENT AND  
6 LICENSING PURPOSES AND TO REQUIRE THOSE AGENCIES TO MAINTAIN THE  
7 CONFIDENTIALITY OF THE EXPUNGED INFORMATION, AND TO MAKE  
8 CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES.

9 The General Assembly of North Carolina enacts:

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

12 **"§ 15A-150. Expunction of records for conviction of certain nonviolent criminal offenses.**

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

16 (1) The person, at the time of the felony offense, had not previously been  
17 convicted of any felony or misdemeanor other than a traffic violation under  
18 the laws of the United States, the laws of this State, or any other state.

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

20 a. G.S. 14-54.

21 b. G.S. 14-56.

22 c. G.S. 14-71.1.

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

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

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

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

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



- 1           a.     That the petitioner has been of good moral character for the 10-year  
2                     period since the date of the felony conviction in question.
- 3           b.     That the petitioner had not been convicted of any other felony or any  
4                     misdemeanor other than a traffic violation under the laws of the  
5                     United States or the laws of this State or any other state.
- 6           c.     That the petitioner has no restitution orders or civil judgments  
7                     representing amounts ordered for restitution entered against the  
8                     petitioner outstanding.
- 9           (2)    Verified affidavits of two persons, who are not related to the petitioner or to  
10                   each other by blood or marriage and were not involved in the actions giving  
11                   rise to the felony conviction in question, that:
- 12           a.     The person knows the character and reputation of the petitioner in the  
13                     community in which the petitioner lives.
- 14           b.     The petitioner's character and reputation are good.
- 15           c.     The petitioner is and has been of good moral character for the  
16                     10-year period since the date of the felony conviction in question.
- 17           (3)    A statement that the petition is a motion in the cause in the case wherein the  
18                   petitioner was convicted.
- 19           (4)    An application on a form approved by the Administrative Office of the  
20                   Courts requesting and authorizing all of the following:
- 21           a.     A State and national criminal record check by the Department of  
22                     Justice using any information required by the Administrative Office  
23                     of the Courts to identify the individual.
- 24           b.     A search by the Department of Justice for any outstanding warrants  
25                     or pending criminal cases.
- 26           c.     A search of the confidential record of expunctions maintained by the  
27                     Administrative Office of the Courts.
- 28           (c)    The petition shall be served upon the district attorney of the court wherein the case  
29                   was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to  
30                   file any objection to the petition and shall be duly notified as to the date of the hearing on the  
31                   petition. The district attorney shall make his or her best efforts to contact the victim, if any, to  
32                   notify the victim of the request for expunction prior to the date of the hearing. The application  
33                   required by subdivision (b)(4) of this section shall be forwarded to the Department of Justice  
34                   and to the Administrative Office of the Courts, which shall conduct the searches and report  
35                   their findings to the court.
- 36           (d)    The court in which the petition was filed may take any of the following steps and  
37                   may consider at least the following issues in rendering a decision upon a petition for  
38                   expunction of records of a felony conviction under this section:
- 39           (1)    Call upon a probation officer for additional investigation or verification of  
40                   the petitioner's conduct during the 10-year period since the date of  
41                   conviction of the felony conviction in question.
- 42           (2)    Review the results of the State and national criminal record check by the  
43                   Department of Justice and Administrative Office of the Courts.
- 44           (3)    Review the amount of restitution, if any, made by the petitioner to the victim  
45                   of the felony conviction to be expunged and give consideration to whether or  
46                   not restitution was paid in full.
- 47           (4)    Review any other information the court deems relevant, including affidavits  
48                   or other testimony provided by law enforcement officers, district attorneys,  
49                   and victims of the felony committed by the petitioner.

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

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

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

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

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

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

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

23       (g) The court shall also order that the felony conviction be expunged from the records  
24 of the court and direct all law enforcement agencies bearing record of the same to expunge that  
25 agency's records of the felony conviction. The clerk shall forward a certified copy of the order  
26 to the sheriff, chief of police, or other arresting law enforcement agency. The sheriff, chief of  
27 police, or head of any other arresting law enforcement agency shall then transmit the copy of  
28 the order with a form supplied by the State Bureau of Investigation to the State Bureau of  
29 Investigation, and the State Bureau of Investigation shall forward the order to the Federal  
30 Bureau of Investigation.

31       (h) A person as to whom an order has been entered pursuant to subsection (e) of this  
32 section may notify any other applicable State or local government agency of the order, and that  
33 State or local government agency shall expunge from its records entries made as a result of the  
34 conviction ordered expunged under this section. The person may also request that the State or  
35 local government agency reverse any administrative actions taken against that person as a result  
36 of the charges or convictions expunged, and the State or local government agency shall use its  
37 discretion in deciding whether or not to reverse, in whole or part, any action taken against that  
38 person. This subsection shall not apply to the Department of Justice for DNA records and  
39 samples stored in the State DNA Database and the State DNA Databank.

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

46           (1) To judges of the General Court of Justice of North Carolina for the purpose  
47 of ascertaining whether any person charged with an offense has been  
48 previously granted a discharge.

49           (2) To federal, State, and local law enforcement agencies for employment  
50 purposes only.

- 1           (3)    To the North Carolina Criminal Justice Education and Training Standards  
2           Commission for certification purposes only.  
3           (4)    To the North Carolina Sheriffs' Education and Training Standards  
4           Commission for certification purposes only.  
5           (5)    To federally insured depository institutions for employment purposes only.  
6           (6)    To the North Carolina State Bar and the Board of Law Examiners for  
7           licensing purposes only.  
8           (7)    To the North Carolina State Board of Certified Public Accountant Examiners  
9           for licensing purposes only.  
10          (8)    To local boards of education for employment purposes only.  
11          (9)    To the Department of Health and Human Services for licensing purposes,  
12          employment purposes, and placement purposes if a criminal history check is  
13          mandated for the license or placement.  
14          (10)   To the North Carolina Medical Board for licensing purposes only.  
15          (11)   To the North Carolina Real Estate Commission for licensing purposes only.  
16          (12)   To the North Carolina Appraisal Board for licensing purposes only.

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

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

26                "**§ 17C-13. Pardons.**

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

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

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

38                "**§ 17E-12. Pardons.**

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

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

49                **SECTION 4.** This act becomes effective December 1, 2009, and applies to  
50                applications for expunction of records made on or after that date.