

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2013

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HOUSE BILL 207

Short Title: Expunction of Drug Offenses. (Public)

Sponsors: Representative Brandon (Primary Sponsor).

*For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.*

Referred to: Judiciary Subcommittee B, if favorable, Appropriations.

March 5, 2013

1 A BILL TO BE ENTITLED  
2 AN ACT TO ALLOW THE EXPUNCTION OF CERTAIN DRUG OFFENSES.  
3 The General Assembly of North Carolina enacts:

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

6 **"§ 15A-145.6. Expunction of drug offenses.**

7 (a) The following definitions apply to this section:

8 (1) Clean. – Free from drug addiction and any unlawful use of controlled  
9 substances.

10 (2) Drug offense. – A conviction of any violation of G.S. 90-95(a) through  
11 G.S. 90-95(g). The term "drug offense" does not include any conviction for a  
12 violation of G.S. 90-95(h).

13 (b) Notwithstanding any other provision of law, if the person is convicted of more than  
14 one drug offense, then the multiple drug offense convictions shall be treated as one drug  
15 offense under this section, and the expunction order issued under this section shall provide that  
16 the multiple drug offense convictions shall be expunged from the person's record in accordance  
17 with this section. There is no requirement that the convictions have occurred in the same  
18 session of court.

19 (c) A person may file a petition in the court where the person was convicted for  
20 expunction of a drug offense conviction from the person's criminal record if the person has no  
21 other misdemeanor or felony convictions, other than a traffic violation, was convicted of a drug  
22 offense that is eligible pursuant to subsection (b) of this section, and provides proof pursuant to  
23 subsection (d) of this section that the person is clean and has been clean for a period of at least  
24 one year prior to the date that the petition is filed. The petition shall not be filed earlier than 15  
25 years after the date of the conviction or when any active sentence, period of probation, and  
26 post-release supervision has been served, whichever occurs later. If the petition is to expunge  
27 multiple convictions, the petition shall not be filed earlier than 15 years after the date of the last  
28 conviction or when any active sentence, period of probation, and post-release supervision has  
29 been served for the last conviction, whichever occurs later.

30 (d) To establish that a person is clean and has been clean for a period of at least one  
31 year prior to the date that the petition is filed, a person shall provide proof that the person has  
32 been tested for drugs every 30 days for a period of at least one year immediately preceding the  
33 date that the petition is filed and tested clean at each testing, and shall also provide a drug  
34 evaluation for review by the court. The Administrative Office of the Courts, in cooperation  
35 with the Department of Health and Human Services, shall determine what type of



1 documentation must be provided to the court regarding the required drug testing and evaluation  
2 and the format in which the documentation shall be presented to the court for review.

3 (e) The petition shall contain, but not be limited to, the following:

- 4 (1) An affidavit by the petitioner that the petitioner has been of good moral  
5 character since the date of conviction for the drug offense and has not been  
6 convicted of any other felony or misdemeanor, other than a traffic violation,  
7 under the laws of the United States or the laws of this State or any other  
8 state.
- 9 (2) Verified affidavits of two persons who are not related to the petitioner or to  
10 each other by blood or marriage, that they know the character and reputation  
11 of the petitioner in the community in which the petitioner lives, and that the  
12 petitioner's character and reputation are good.
- 13 (3) A statement that the petition is a motion in the cause in the case wherein the  
14 petitioner was convicted.
- 15 (4) An application on a form approved by the Administrative Office of the  
16 Courts requesting and authorizing a name-based State and national criminal  
17 history record check by the Department of Justice using any information  
18 required by the Administrative Office of the Courts to identify the  
19 individual, a search by the Department of Justice for any outstanding  
20 warrants on pending criminal cases, and a search of the confidential record  
21 of expunctions maintained by the Administrative Office of the Courts. The  
22 application shall be forwarded to the Department of Justice and to the  
23 Administrative Office of the Courts, which shall conduct the searches and  
24 report their findings to the court.
- 25 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
26 representing amounts ordered for restitution entered against the petitioner  
27 are outstanding.
- 28 (6) Documentation in a format approved by the Administrative Office of the  
29 Courts establishing that the petitioner is clean and has been clean for a  
30 period of at least one year prior to the date of the filing of the petition and a  
31 drug evaluation.

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

39 The presiding judge may call upon a probation officer for any additional investigation or  
40 verification of the petitioner's conduct since the conviction. The court shall review any other  
41 information the court deems relevant, including, but not limited to, affidavits or other testimony  
42 provided by law enforcement officers, district attorneys, and victims of crimes committed by  
43 the petitioner.

44 If the court after hearing finds that the petitioner has not previously been granted an  
45 expunction under this section, the petitioner is clean, the petitioner has remained of good moral  
46 character, the petitioner has no outstanding warrants or pending criminal cases, the petitioner  
47 has no other felony or misdemeanor convictions other than a traffic violation, the petitioner has  
48 no outstanding restitution orders or civil judgments representing amounts ordered for restitution  
49 entered against the petitioner, and the petitioner was convicted of an offense eligible for  
50 expunction under this section and was convicted of, and completed any sentence received for,  
51 the drug offense at least 15 years prior to the filing of the petition, it may order that such person

1 be restored, in the contemplation of the law, to the status the person occupied before such arrest  
2 or indictment or information. If the court denies the petition, the order shall include a finding as  
3 to the reason for the denial.

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

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

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

18 (h) Any other applicable State or local government agency shall expunge from its  
19 records entries made as a result of the conviction ordered expunged under this section upon  
20 receipt from the petitioner of an order entered pursuant to this section. The agency shall also  
21 reverse any administrative actions taken against a person whose record is expunged under this  
22 section as a result of the charges or convictions expunged. This subsection shall not apply to  
23 the Department of Justice for DNA records and samples stored in the State DNA Database and  
24 the State DNA Databank or to fingerprint records.

25 (i) A person who files a petition for expunction of a criminal record under this section  
26 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the  
27 time the petition is filed. Fees collected under this subsection shall be deposited in the General  
28 Fund. This subsection does not apply to petitions filed by an indigent."

29 **SECTION 2.** G.S. 15A-145.5(a)(5) reads as rewritten:

30 "(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent  
31 felony" means any misdemeanor or felony except the following:

32 ...

33 (5) Any felony offense in Chapter 90 of the General Statutes ~~where the offense~~  
34 ~~involves methamphetamines, heroin, or possession with intent to sell or~~  
35 ~~deliver or sell and deliver cocaine.~~ Statutes."

36 **SECTION 3.** G.S. 15A-151(a) reads as rewritten:

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

- 40 (1) To a judge of the General Court of Justice of North Carolina for the purpose  
41 of ascertaining whether a person charged with an offense has been  
42 previously granted a discharge or an expunction.
- 43 (2) To a person requesting confirmation of the person's own discharge or  
44 expunction, as provided in G.S. 15A-152.
- 45 (3) To the General Court of Justice of North Carolina in response to a subpoena  
46 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 47 (4) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4 or~~  
48 ~~G.S. 15A-145.5, G.S. 15A-145.4, 15A-145.5, or 15A-145.6~~ to State and  
49 local law enforcement agencies for employment purposes only.
- 50 (5) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4 or~~  
51 ~~G.S. 15A-145.5, G.S. 15A-145.4, 15A-145.5, or 15A-145.6~~ to the North

1 Carolina Criminal Justice Education and Training Standards Commission for  
2 certification purposes only.  
3 (6) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4~~ or  
4 ~~G.S. 15A-145.5~~, G.S. 15A-145.4, 15A-145.5, or 15A-145.6 to the North  
5 Carolina Sheriffs' Education and Training Standards Commission for  
6 certification purposes only."

7 **SECTION 4.** G.S. 17C-13(b) reads as rewritten:

8 "(b) Notwithstanding ~~G.S. 15A-145.4~~ or ~~G.S. 15A-145.5~~, G.S. 15A-145.4, 15A-145.5, or  
9 15A-145.6 the Commission may gain access to a person's felony conviction records, including  
10 those maintained by the Administrative Office of the Courts in its confidential files containing  
11 the names of persons granted expunctions. The Commission may deny, suspend, or revoke a  
12 person's certification based solely on that person's felony conviction, whether or not that  
13 conviction was expunged."

14 **SECTION 5.** G.S. 17E-12(b) reads as rewritten:

15 "(b) Notwithstanding ~~G.S. 15A-145.4~~ or ~~G.S. 15A-145.5~~, G.S. 15A-145.4, 15A-145.5, or  
16 15A-145.6 the Commission may gain access to a person's felony conviction records, including  
17 those maintained by the Administrative Office of the Courts in its confidential files containing  
18 the names of persons granted expunctions. The Commission may deny, suspend, or revoke a  
19 person's certification based solely on that person's felony conviction, whether or not that  
20 conviction was expunged."

21 **SECTION 6.** This act becomes effective December 1, 2013.