

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 1753

Short Title: Clarifying Changes to Expunction Statute.

(Public)

Sponsors: Representatives Moore; and Harrison.

Referred to: Judiciary II.

April 19, 2007

A BILL TO BE ENTITLED

AN ACT TO MAKE TECHNICAL CHANGES TO CLARIFY THAT A FIRST OFFENDER WHO COMMITTED A MISDEMEANOR WHEN LESS THAN EIGHTEEN YEARS OF AGE MAY HAVE THE CONVICTION EXPUNGED ALTHOUGH THE PERSON MAY BE EIGHTEEN YEARS OF AGE OR OLDER AT THE TIME OF THE CONVICTION.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor; commission of a misdemeanor for which the offender was convicted; expunction of certain other misdemeanors.

(a) Whenever any person who has (i) committed a misdemeanor when under not yet attained the age of 18 years and has 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, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years and has 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, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. The petition cannot be filed earlier than two years after the date of the conviction or any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:

(1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question-question, including the period of time between the date of the commission and conviction of the misdemeanor, and has not been convicted of any felony, or misdemeanor other than a traffic violation,

1 under the laws of the United States or the laws of this State or any
2 other state.

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

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

9 (4) Affidavits of the clerk of superior court, chief of police, where
10 appropriate, and sheriff of the county in which the petitioner was
11 convicted and, if different, the county of which the petitioner is a
12 resident, showing that the petitioner has not been convicted of a felony
13 or misdemeanor other than a traffic violation under the laws of this
14 State at any time prior to the conviction for the misdemeanor in
15 question or during the two-year period following that
16 conviction-conviction, including the period of time between the date of
17 the commission and conviction of the misdemeanor.

18 (5) An affidavit by the petitioner that no restitution orders or civil
19 judgments representing amounts ordered for restitution entered against
20 him are outstanding.

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

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

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

43 (c) The court shall also order that the said misdemeanor conviction be expunged
44 from the records of the court, and direct all law-enforcement agencies bearing record of

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

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

15 (e) A person who files a petition for expunction of a criminal record under this
16 section must pay the clerk of superior court a fee of one hundred twenty-five dollars
17 (\$125.00) at the time the petition is filed. Fees collected under this subsection shall be
18 deposited in the General Fund. This subsection does not apply to petitions filed by an
19 indigent."

20 **SECTION 2.** This act becomes effective December 1, 2007, and applies to
21 all petitions for expunctions filed on or after that date.