

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

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HOUSE DRH50215-LH-7 (10/08)

Short Title: Amend Expunction Law.

(Public)

Sponsors: Representative Haire.

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A PERSON CONVICTED OF A CERTAIN NONVIOLENT
3 CRIMINAL OFFENSE WHOSE CITIZENSHIP RIGHTS HAVE BEEN RESTORED
4 FOR AT LEAST SEVEN YEARS AND WHO CONTINUES TO ABIDE BY THE LAW
5 MAY HAVE THE OFFENSE EXPUNGED FROM HIS OR HER RECORD.

6 The General Assembly of North Carolina enacts:

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

9 **"§ 15A-149.1. Expunction of records for convictions of certain criminal offenses if**
10 **petitioner's citizenship rights have been restored for at least seven years and**
11 **there are no subsequent criminal convictions.**

12 (a) Definitions.– The following definitions apply in this section:

13 (1) Criminal offense. – A misdemeanor, Class H felony, or Class I felony;
14 however, the term does not include any of the following:

15 a. An offense that includes assault as an essential element of the
16 offense, other than a violation of G.S. 14-33(a) or (b).

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

19 c. An offense that includes the possession or use of a firearm as an
20 essential element of the offense.

21 d. An offense for which the offender was armed with or used a firearm.

22 e. An offense that is trafficking under G.S. 90-95(h).

23 f. An offense that is a breaking or entering offense that involves a
24 residence or dwelling.

25 (2) Traffic violation. – The term does not include felony speeding to elude arrest
26 or felony vehicular homicide.

27 (b) Eligibility to Petition for Expunction. – A person who was convicted of a criminal
28 offense may petition the court in which the person was convicted to expunge the criminal
29 offense from the person's criminal record if all of the following criteria are met:

30 (1) With the exception of the criminal offense for which the petition has been
31 filed, the person has never been convicted of any felony or misdemeanor
32 other than a traffic violation under the laws of the United States, the laws of
33 this State, or the laws of any other state.

34 (2) The person has no pending felony or misdemeanor charges other than a
35 traffic violation in federal court, a court of this State, or any other state court.



- 1 (3) The person has no outstanding restitution orders or civil judgments
2 representing amounts ordered for restitution entered against him or her.
3 (4) The person has no previous expunction under this section.
4 (5) The person's citizenship rights have been restored pursuant to Chapter 13 of
5 the General Statutes for a period of at least seven years.

6 (c) Time Frame for Filing Petition; Contents of Petition. – A petition to expunge a
7 criminal offense under this section shall not be filed earlier than seven years after the date that
8 the person's citizenship rights have been restored pursuant to Chapter 13 of the General
9 Statutes. The petition shall contain the following:

- 10 (1) An affidavit by the petitioner that the petitioner's citizenship rights have
11 been restored pursuant to Chapter 13 of the General Statutes and that the
12 petitioner has been of good behavior for the seven-year period since the
13 restoration of the petitioner's citizenship rights and has not been convicted of
14 any felony or misdemeanor other than a traffic violation under the laws of
15 the United States or the laws of this State or any other state.
16 (2) Verified affidavits of two persons who are not related to the petitioner or to
17 each other by blood or marriage, that they know the character and reputation
18 of the petitioner in the community in which the petitioner lives, and that the
19 person's character and reputation are good.
20 (3) A statement that the petition is a motion in the cause in the case wherein the
21 petitioner was convicted.
22 (4) An application on a form approved by the Administrative Office of the
23 Courts requesting and authorizing a State and national criminal history
24 record 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 forwarded to
28 the Department of Justice and to the Administrative Office of the Courts,
29 which shall conduct the searches and report their findings to the court.
30 (5) An affidavit by the petitioner that no restitution orders or civil judgments
31 representing amounts ordered for restitution entered against the petitioner
32 are outstanding.
33 (6) A list of the occupational licensing boards to be notified of the expunction
34 on behalf of the petitioner, if the expunction is ordered by the court. The list
35 shall be limited to those occupational licensing boards that have denied the
36 petitioner an occupational license based on the petitioner's conviction of the
37 criminal offense.

38 (d) Service of Petition on District Attorney. – The petition shall be served upon the
39 district attorney of the court where the case was tried resulting in conviction. The district
40 attorney shall have 30 days thereafter to file any objection to the petition and shall be notified
41 as to the date of the hearing of the petition.

42 (e) Additional Investigation or Verification of Petitioner's Conduct. – The judge to
43 whom the petition is presented may call upon a probation officer for any additional
44 investigation or verification of the petitioner's conduct for the period of time extending from the
45 completion of sentence by petitioner to the date of the petition that the judge deems desirable.

46 (f) Hearing and Determination of Whether to Grant Petition. – The court shall conduct
47 a hearing to determine whether the petition for expunction should be granted. At the hearing,
48 the court may consider any information the court deems relevant that is provided by the
49 petitioner, law enforcement officers, the district attorney, and victims of the criminal offense
50 committed by the petitioner. Except as provided otherwise by this subsection, if the court finds
51 that the criteria set forth in subsection (b) of this section have been met, then the court shall

1 order that the petitioner be restored, in the contemplation of the law, to the status the petitioner
2 occupied before the arrest, indictment, conviction, or information for the criminal offense. The
3 court shall not order an expunction under this section if the court determines that sufficient
4 cause exists to deny the petition.

5 (g) Judicial Directive to State and Local Government Agencies to Expunge Relevant
6 Records. – If the court finds that the petition shall be granted and orders the criminal offense
7 conviction expunged, the court shall also direct all law enforcement agencies, the Department
8 of Correction, the Division of Motor Vehicles, and any other State or local government
9 agencies identified by the petitioner as bearing record of the same to expunge their records of
10 the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall
11 notify State and local agencies of the court's order as provided in G.S. 15A-150.

12 (h) No Legal Requirement to Disclose Expunged Criminal Offense Except in Certain
13 Circumstances. – No person whose record is ordered expunged pursuant to this section shall be
14 held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a
15 false statement by reason of his or her failure to recite or acknowledge such arrest, indictment,
16 conviction, information, trial, or response to any inquiry made of the person for any purpose.

17 However, a person pursuing certification under the provisions of Chapter 17C or Chapter
18 17E of the General Statutes shall disclose any and all felony convictions to the certifying
19 commission regardless of whether or not the felony convictions were expunged under this
20 section.

21 (i) Limit Number of Expunctions; Calculation of Prior Record Points if Subsequent
22 Criminal Conviction. – Expunction of records may occur only once under this section with
23 respect to any person. If a person's record is expunged pursuant to this section and the person is
24 convicted of a subsequent felony or misdemeanor after the expunction, other than a traffic
25 violation, then the court shall include the expunged offense in the calculation of prior record
26 points when imposing the sentence for the subsequent felony or misdemeanor.

27 (j) Fees. – A person who files a petition for expunction of a criminal record under this
28 section shall pay the clerk of superior court a fee of one hundred fifty dollars (\$150.00) at the
29 time the petition is filed. Seventy-five dollars (\$75.00) of the fee collected under this subsection
30 shall be remitted to the North Carolina Department of Justice to pay the costs of the State
31 Bureau of Investigation purging records pursuant to receipt of an order of expunction. The
32 remaining seventy-five dollars (\$75.00) of the fee shall be remitted to the Administrative Office
33 of the Courts to pay the costs associated with implementation of the provisions of this section.
34 This subsection does not apply to petitions filed by an indigent."

35 **SECTION 2.** G.S. 15A-151(a) reads as rewritten:

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

- 39 (1) To a judge of the General Court of Justice of North Carolina for the purpose
40 of ascertaining whether a person charged with an offense has been
41 previously granted a discharge or an expunction.
- 42 (2) To a person requesting confirmation of the person's own discharge or
43 expunction, as provided in G.S. 15A-152.
- 44 (3) To the General Court of Justice of North Carolina in response to a subpoena
45 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 46 (4) To federal, State, and local law enforcement agencies for employment
47 purposes only, and only if the expunction was ordered pursuant to
48 G.S. 15A-149.1.
- 49 (5) To the North Carolina Criminal Justice Education and Training Standards
50 Commission for certification purposes only, and only if the expunction was
51 ordered pursuant to G.S. 15A-149.1.

1 (6) To the North Carolina Sheriffs' Education and Training Standards
2 Commission for certification purposes only, and only if the expunction was
3 ordered pursuant to G.S. 15A-149.1."

4 **SECTION 3.** This act becomes effective December 1, 2011.