

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2003

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HOUSE BILL 1518
Senate Judiciary II Committee Substitute Adopted 6/30/04

Short Title: Require Payment of Restitution for Expunction.

(Public)

Sponsors:

Referred to:

May 19, 2004

A BILL TO BE ENTITLED

AN ACT REQUIRING A PERSON TO PAY ANY OUTSTANDING RESTITUTION
ORDERS PRIOR TO THE EXPUNCTION OF THE PERSON'S CRIMINAL
RECORD.

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; expunction of certain other
misdemeanors.**

(a) Whenever any person who has (i) 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 and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and

1 reputation of the petitioner in the community in which he lives and that
2 his character and reputation are good.

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

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

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

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

43 (d) The clerk of superior court in each county in North Carolina shall, as soon as
44 practicable after each term of court in his county, file with the Administrative Office of

1 the Courts, the names of those persons granted a discharge under the provisions of this
2 section, and the Administrative Office of the Courts shall maintain a confidential file
3 containing the names of persons granted conditional discharges. The information
4 contained in such file shall be disclosed only to judges of the General Court of Justice of
5 North Carolina for the purpose of ascertaining whether any person charged with an
6 offense has been previously granted a discharge.

7 (e) A person who files a petition for expunction of a criminal record under this
8 section must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the
9 time the petition is filed. Fees collected under this subsection shall be deposited in the
10 General Fund. This subsection does not apply to petitions filed by an indigent."

11 **SECTION 2.** This act becomes effective September 1, 2004, and applies to
12 petitions for expunction filed on or after that date.