

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 491

Short Title: Expunge Nonviolent Crimes. (Public)

Sponsors: Senators Kinnaird; Atwater, Berger of Franklin, Bingham, Dannelly, Dorsett, Foriest, Graham, Hartsell, McKissick, Nesbitt, Vaughan, and Weinstein.

Referred to: Judiciary I.

March 10, 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:

33 a. That the petitioner has been of good moral character for the 10-year
34 period since the date of the felony conviction in question.



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

- 1 (1) The petitioner has remained of good moral character 10 years from the date
2 of conviction of the felony in question or any active sentence, period of
3 probation, or post-release supervision has been served, whichever is later.
4 (2) The petitioner has not previously been convicted of any felony or
5 misdemeanor other than a traffic violation under the laws of the United
6 States, the laws of this State, or any other state.
7 (3) The petitioner has no outstanding warrants or pending criminal cases.
8 (4) The petitioner has no outstanding restitution orders or civil judgments
9 representing amounts ordered for restitution entered against the petitioner.
10 (5) The search of the confidential records of expunctions conducted by the
11 Administrative Office of the Courts shows that the petitioner has not been
12 previously granted an expunction.

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

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

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

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

- 43 (1) To judges of the General Court of Justice of North Carolina for the purpose
44 of ascertaining whether any person charged with an offense has been
45 previously granted a discharge.
46 (2) To federal, State, and local law enforcement agencies for employment
47 purposes only.
48 (3) To the North Carolina Criminal Justice Education and Training Standards
49 Commission for certification purposes only.
50 (4) To the North Carolina Sheriffs' Education and Training Standards
51 Commission for certification purposes only.

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

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

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

22 "**§ 17C-13. Pardons.**

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

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

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

34 "**§ 17E-12. Pardons.**

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

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

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