

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1554

Short Title: Expunction/Convictions of Certain Crimes. (Public)

Sponsors: Representatives Womble, Parmon (Primary Sponsors); and Jones.

Referred to: Judiciary II.

April 21, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR
3 CERTAIN CRIMINAL OFFENSES.

4 The General Assembly of North Carolina enacts:

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

7 "**§ 15A-149. Expunction of records for conviction of certain criminal offenses if**
8 **there are no subsequent criminal convictions for at least one year.**

9 (a) For purposes of this section, the term "criminal offense" means a
10 misdemeanor or a Class C through Class I felony; however, the term does not include
11 any of the following:

- 12 (1) An offense that includes assault as an essential element of the offense.
13 (2) An offense for which the offender must register under Article 27A of
14 Chapter 14 of the General Statutes.
15 (3) An offense that includes the possession or use of a firearm as an
16 essential element of the offense.
17 (4) An offense for which the offender was armed with or used a firearm.
18 (5) An offense that is trafficking under G.S. 90-95(h).

19 (b) A person who pleads guilty to or is guilty of a criminal offense may file a
20 petition in the court where he or she was convicted for expunction of the criminal
21 offense from the person's criminal record after the person has served his or her full
22 sentence. The petition cannot be filed earlier than one year after the date of the
23 conviction or any period of probation, whichever occurs later. The petition shall
24 contain, but not be limited to, the following:

- 25 (1) An affidavit by the petitioner that he or she has been of good behavior
26 for the one-year period since the date of conviction of the criminal
27 offense in question and has not been convicted of any felony or
28 misdemeanor other than a traffic violation under the laws of the United
29 States or the laws of this State or any other state for that year.

- 1 (2) Verified affidavits of two persons who are not related to the petitioner
2 or to each other by blood or marriage, that they know the character and
3 reputation of the petitioner in the community in which the petitioner
4 lives and that the person's character and reputation are good.
- 5 (3) A statement that the petition is a motion in the cause in the case
6 wherein the petitioner was convicted.
- 7 (4) Affidavits of the clerk of superior court, chief of police, where
8 appropriate, and sheriff of the county in which the petitioner was
9 convicted and, if different, the county of which the petitioner is a
10 resident, showing that the petitioner has not been convicted of a felony
11 or misdemeanor other than a traffic violation under the laws of this
12 State at any time during the one-year period following that conviction.
- 13 (5) An affidavit by the petitioner that no restitution orders or civil
14 judgments representing amounts ordered for restitution entered against
15 the petitioner are outstanding.

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

20 The judge to whom the petition is presented may call upon a probation officer for
21 any additional investigation or verification of the petitioner's conduct during the
22 one-year period that the judge deems desirable.

23 (c) If the court, after hearing, finds that the petitioner had remained of good
24 behavior and been free of conviction of any felony or misdemeanor, other than a traffic
25 violation, for one year from the date of conviction of the criminal offense in question
26 and the petitioner has no outstanding restitution orders or civil judgments representing
27 amounts ordered for restitution entered against the petitioner, then the court shall order
28 that the petitioner be restored, in the contemplation of the law, to the status the
29 petitioner occupied before the arrest or indictment or information for the criminal
30 offense. No person as to whom such order has been entered shall be held thereafter
31 under any provision of any laws to be guilty of perjury or otherwise giving a false
32 statement by reason of his or her failure to recite or acknowledge such arrest,
33 indictment, information, trial, or response to any inquiry made of the person for any
34 purpose.

35 (d) The court shall also order that the conviction for the criminal offense be
36 expunged from the records of the court and direct all law enforcement agencies bearing
37 record of the same to expunge their records of the conviction. The clerk shall forward a
38 certified copy of the order to the sheriff, chief of police, or other arresting agency. The
39 sheriff, chief, or head of any other arresting agency shall then transmit the copy of the
40 order 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 (e) Any person entitled to an expunction under this section may also apply to the
44 court for an order expunging DNA records when the person's DNA record or profile has

1 been included in the State DNA Database, and the person's DNA sample is stored in the
2 State DNA Databank. A copy of the application for expunction of the DNA record or
3 DNA sample shall be served on the district attorney for the judicial district in which the
4 charges of the criminal offense were brought not less than 20 days prior to the date of
5 the hearing on the application. The order of expunction shall include the name and
6 address of the defendant and the defendant's attorney and shall direct the SBI to send a
7 letter documenting expunction as required by subsection (f) of this section.

8 (f) Upon receiving an order of expunction entered pursuant to subsection (c) of
9 this section, the SBI shall purge the DNA record and all other identifying information
10 from the State DNA Database and the DNA sample stored in the State DNA Databank
11 covered by the order, except that the order shall not apply to other offenses committed
12 by the individual that qualify for inclusion in the State DNA Database and the State
13 DNA Databank. A letter documenting expunction of the DNA record and destruction of
14 the DNA sample shall be sent by the SBI to the defendant and the defendant's attorney
15 at the address specified by the court in the order of expunction.

16 (g) The clerk of superior court in each county in North Carolina shall, as soon as
17 practicable after each term of court in his or her county, file with the Administrative
18 Office of the Courts, the name of those persons granted expunctions under the
19 provisions of this section, and the Administrative Office of the Courts shall maintain a
20 confidential file containing the name of persons granted expunctions. The information
21 contained in the file shall be disclosed only to judges of the General Court of Justice of
22 North Carolina for the purpose of ascertaining whether any person charged with an
23 offense has been previously granted an expunction.

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

28 **SECTION 2.** This act becomes effective December 1, 2005.