

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE DRS35310-LHf-203 (2/6)

Short Title: Expunge Nonviolent Crimes/Young Person. (Public)

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Sponsors: Senator Kinnaird.

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Referred to:

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A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR  
2 CERTAIN NONVIOLENT CRIMINAL OFFENSES IF THE PERSON WAS  
3 SEVENTEEN TO TWENTY-ONE YEARS OF AGE AT THE TIME OF THE  
4 CONVICTION, TO ALLOW DISCLOSURE OF EXPUNGED INFORMATION  
5 TO LAW ENFORCEMENT AGENCIES AND FEDERALLY INSURED  
6 DEPOSITORY INSTITUTIONS FOR EMPLOYMENT PURPOSES ONLY AND  
7 TO REQUIRE THOSE AGENCIES AND INSTITUTIONS TO MAINTAIN THE  
8 CONFIDENTIALITY OF THE EXPUNGED INFORMATION, TO MAKE  
9 CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES, TO  
10 INCREASE THE FEES FOR EXPUNCTIONS, AND TO REQUIRE STATE AND  
11 NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS.  
12

13 The General Assembly of North Carolina enacts:

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

16 "**§ 15A-150. Expunction of records for conviction of certain nonviolent criminal**  
17 **offenses committed by a young person if there are no subsequent**  
18 **criminal convictions for at least 10 years.**

19 (a) The following definitions apply in this section:

20 (1) Nonviolent criminal offense. – A misdemeanor, Class H felony, or  
21 Class I felony; however, the term does not include any of the  
22 following:

23 a. An offense that includes assault as an essential element of the  
24 offense.

25 b. An offense for which the offender must register under Article  
26 27A of Chapter 14 of the General Statutes.

- 1           c.     An offense that includes the possession or use of a firearm as an  
2                 essential element of the offense or is used as an aggravating  
3                 factor in sentencing.  
4           d.     An offense that is trafficking under G.S. 90-95(h).  
5           e.     An offense that involves impaired driving.

6           (2)   Young person. – A person who is 17, 18, 19, 20 or 21 years of age.

7           (b)   A person who was convicted as a young person of a nonviolent criminal  
8                 offense, and who has not been convicted of any felony or misdemeanor other than the  
9                 nonviolent criminal offense or a traffic violation under the laws of the United States, the  
10                laws of this State, or any other state, has no outstanding warrants or pending criminal  
11                cases, and has not previously obtained an expunction under this section, may file a  
12                petition in the court where he or she was convicted as a young person for expunction of  
13                the nonviolent criminal offense from the person's criminal record. The petition cannot  
14                be filed earlier than 10 years after the date of the conviction, period of active sentence,  
15                period of post-release supervision, or period of probation has been completed,  
16                whichever occurs later. The petition shall contain, but not be limited to, the following:

17           (1)   An affidavit by the petitioner that the petitioner was a young person at  
18                 the time of the conviction, has been of good behavior for the 10-year  
19                 period since the date of conviction of the nonviolent criminal offense  
20                 in question, has not been convicted of any felony or misdemeanor  
21                 other than a traffic violation under the laws of the United States or the  
22                 laws of this State or any other state, has no outstanding warrants or  
23                 pending criminal cases, and has not previously obtained an expunction  
24                 under this section.

25           (2)   Verified affidavits of two persons who are not related to the petitioner  
26                 or to each other by blood or marriage, that they know the character and  
27                 reputation of the petitioner in the community in which the petitioner  
28                 lives, and that the person's character and reputation are good.

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

31           (4)   An application on a form approved by the Administrative Office of the  
32                 Courts requesting and authorizing (i) a State and national criminal  
33                 record check by the Department of Justice using any information  
34                 required by the Administrative Office of the Courts to identify the  
35                 individual; (ii) a search by the Department of Justice for any  
36                 outstanding warrants or pending criminal cases; and (iii) a search of  
37                 the confidential record of expunctions maintained by the  
38                 Administrative Office of the Courts. The application shall be  
39                 forwarded to the Department of Justice and to the Administrative  
40                 Office of the Courts, which shall conduct the searches and report their  
41                 findings to the court.

42           (5)   An affidavit by the petitioner that no restitution orders or civil  
43                 judgments representing amounts ordered for restitution entered against  
44                 the petitioner are outstanding.

1        The petition shall be served upon the district attorney of the court where the case  
2 was tried resulting in conviction. The district attorney shall have 10 days to file any  
3 objection to the petition and shall be notified as to the date of the hearing of the petition.

4        The judge to whom the petition is presented may call upon a probation officer for  
5 any additional investigation or verification of the petitioner's conduct during the 10-year  
6 period that the judge deems desirable.

7        (c) If the court, after hearing, finds that the petitioner was a young person at the  
8 time he or she was convicted of the nonviolent criminal offense, the petitioner has  
9 remained of good behavior and been free of conviction of any felony or misdemeanor,  
10 other than a traffic violation, for 10 years from the date of conviction of the nonviolent  
11 criminal offense in question, the petitioner has not previously obtained an expunction  
12 under this section, the petitioner has no outstanding warrants or pending criminal cases,  
13 and the petitioner has no outstanding restitution orders or civil judgments representing  
14 amounts ordered for restitution entered against the petitioner, then the court shall order  
15 that the petitioner be restored, in the contemplation of the law, to the status the  
16 petitioner occupied before the arrest, indictment, conviction, or information for the  
17 nonviolent criminal offense. No person as to whom such order has been entered shall be  
18 held thereafter under any provision of any laws to be guilty of perjury or otherwise  
19 giving a false statement by reason of his or her failure to recite or acknowledge such  
20 arrest, indictment, conviction, information, trial, or response to any inquiry made of the  
21 person for any purpose.

22        (d) The court shall also order that the conviction for the nonviolent criminal  
23 offense be expunged from the records of the court and direct all law enforcement  
24 agencies bearing record of the same to expunge their records of the conviction. The  
25 clerk shall forward a certified copy of the order to the sheriff, chief of police, or other  
26 arresting agency. The sheriff, chief, or head of any other arresting agency shall then  
27 transmit the copy of the order with a form supplied by the State Bureau of Investigation  
28 to the State Bureau of Investigation, and the State Bureau of Investigation shall forward  
29 the order to the Federal Bureau of Investigation. Expunction of records under this  
30 section may occur only once with respect to any person.

31        (e) The clerk of superior court in each county in North Carolina shall, as soon as  
32 practicable after each term of court in his or her county, file with the Administrative  
33 Office of the Courts the names of those persons granted expunctions under the  
34 provisions of this section and the offenses for which the expunctions were granted, and  
35 the Administrative Office of the Courts shall maintain a confidential file containing the  
36 names of persons granted expunctions and the offenses for which the expunctions were  
37 granted. The information contained in the file shall be disclosed only as follows:

- 38            (1) To judges of the General Court of Justice of North Carolina for the  
39 purpose of ascertaining whether any person charged with an offense  
40 has been previously granted an expunction.
- 41            (2) To State and local law enforcement agencies for employment purposes  
42 only.
- 43            (3) To federally insured depository institutions for employment purposes  
44 only.

1       (f) A person who knowingly and willfully discloses or uses in an unauthorized  
2 manner information obtained under subsection (e) of this section, except as otherwise  
3 permitted by that subsection, is guilty of a Class 3 misdemeanor.

4       (g) A person who files a petition for expunction of a criminal record under this  
5 section must pay the clerk of superior court a fee of two hundred dollars (\$200.00) at  
6 the time the petition is filed. One hundred dollars (\$100.00) of the fee collected under  
7 this subsection shall be remitted to the North Carolina Department of Justice to pay the  
8 costs of the State Bureau of Investigation purging records pursuant to receipt of an order  
9 of expunction. The remaining one hundred dollars (\$100.00) of the fee shall be remitted  
10 to the Administrative Office of the Courts to pay the costs associated with  
11 implementation of the provisions of this section. This subsection does not apply to  
12 petitions filed by an indigent."

13       **SECTION 2.** G.S. 15A-145 reads as rewritten:

14       **"§ 15A-145. Expunction of records for first offenders under the age of 18 at the**  
15 **time of conviction of misdemeanor; expunction of certain other**  
16 **misdemeanors.**

17       (a) Whenever any person who has not previously obtained an expunction under  
18 this section and has (i) not yet attained the age of 18 years and has not previously been  
19 convicted of any felony, or misdemeanor other than a traffic violation, under the laws of  
20 the United States, the laws of this State or any other state, pleads guilty to or is guilty of  
21 a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years  
22 and has not previously been convicted of any felony, or misdemeanor other than a  
23 traffic violation, under the laws of the United States, the laws of this State or any other  
24 state, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to  
25 G.S. 18B-302(b)(1), he may file a petition in the court where he was convicted for  
26 expunction of the misdemeanor from his criminal record. The petition cannot be filed  
27 earlier than two years after the date of the conviction or any period of probation,  
28 whichever occurs later, and the petition shall contain, but not be limited to, the  
29 following:

- 30       (1) An affidavit by the petitioner that he has not previously obtained an  
31 expunction under this section and that he has been of good behavior  
32 for the two-year period since the date of conviction of the  
33 misdemeanor in question and has not been convicted of any felony, or  
34 misdemeanor other than a traffic violation, under the laws of the  
35 United States or the laws of this State or any other state.
- 36       (2) Verified affidavits of two persons who are not related to the petitioner  
37 or to each other by blood or marriage, that they know the character and  
38 reputation of the petitioner in the community in which he lives and that  
39 his character and reputation are good.
- 40       (3) A statement that the petition is a motion in the cause in the case  
41 wherein the petitioner was convicted.
- 42       (4) ~~Affidavits of the clerk of superior court, chief of police, where~~  
43 ~~appropriate, and sheriff of the county in which the petitioner was~~  
44 ~~convicted and, if different, the county of which the petitioner is a~~

1           ~~resident, showing that the petitioner has not been convicted of a felony~~  
2           ~~or misdemeanor other than a traffic violation under the laws of this~~  
3           ~~State at any time prior to the conviction for the misdemeanor in~~  
4           ~~question or during the two-year period following that conviction.~~

5           (4) An application on a form approved by the Administrative Office of the  
6           Courts requesting and authorizing a State and national criminal record  
7           check by the Department of Justice using any information required by  
8           the Administrative Office of the Courts to identify the individual, and  
9           a search of the confidential record of expunctions maintained by the  
10           Administrative Office of the Courts. The application shall be  
11           forwarded to the Department of Justice and to the Administrative  
12           Office of the Courts which shall conduct the searches and report their  
13           findings to the court.

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

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

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

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

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

1 Investigation, and the State Bureau of Investigation shall forward the order to the  
2 Federal Bureau of Investigation.

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

11 (e) A person who files a petition for expunction of a criminal record under this  
12 section must pay the clerk of superior court a fee of ~~one hundred twenty-five dollars~~  
13 ~~(\$125.00)~~ two hundred dollars (\$200.00) at the time the petition is filed. ~~Fees collected~~  
14 ~~under this subsection shall be deposited in the General Fund.~~ One hundred dollars  
15 (\$100.00) of the fee collected under this subsection shall be remitted to the North  
16 Carolina Department of Justice to pay the costs of the State Bureau of Investigation  
17 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  
19 the Courts to pay the costs associated with implementation of the provisions of this  
20 section. This subsection does not apply to petitions filed by an indigent."

21 **SECTION 3.** G.S. 90-96(b) reads as rewritten:

22 "(b) Upon the dismissal of such person, and discharge of the proceedings against  
23 him under subsection (a) of this section, such person, if he were not over 21 years of age  
24 at the time of the offense, may apply to the court for an order to expunge from all  
25 official records (other than the confidential file to be retained by the Administrative  
26 Office of the Courts under subsection (c)) all recordation relating to his arrest,  
27 indictment or information, trial, finding of guilty, and dismissal and discharge pursuant  
28 to this section. The applicant shall attach to the application the following:

- 29 (1) An affidavit by the applicant that he has been of good behavior during  
30 the period of probation since the decision to defer further proceedings  
31 on the offense in question and has not been convicted of any felony, or  
32 misdemeanor, other than a traffic violation, under the laws of the  
33 United States or the laws of this State or any other state;
- 34 (2) Verified affidavits by two persons who are not related to the applicant  
35 or to each other by blood or marriage, that they know the character and  
36 reputation of the petitioner in the community in which he lives, and  
37 that his character and reputation are good;
- 38 ~~(3) Affidavits of the clerk of superior court, chief of police, where~~  
39 ~~appropriate, and sheriff of the county in which the petitioner was~~  
40 ~~convicted, and, if different, the county of which the petitioner is a~~  
41 ~~resident, showing that the applicant has not been convicted of a felony~~  
42 ~~or misdemeanor other than a traffic violation under the laws of this~~  
43 ~~State at any time prior to the conviction for the offense in question or~~

1           ~~during the period of probation following the decision to defer further~~  
2           ~~proceedings on the offense in question.~~

3           (3) An application on a form approved by the Administrative Office of the  
4           Courts requesting and authorizing a State and national criminal record  
5           check by the Department of Justice using any information required by  
6           the Administrative Office of the Courts to identify the individual and a  
7           search of the confidential record of expunctions maintained by the  
8           Administrative Office of the Courts. The application shall be  
9           forwarded to the Department of Justice and to the Administrative  
10           Office of the Courts, which shall conduct the searches and report their  
11           findings to the court.

12           The judge to whom the petition is presented is authorized to call upon a probation  
13           officer for any additional investigation or verification of the petitioner's conduct during  
14           the probationary period deemed desirable.

15           If the court determines, after hearing, that such person was dismissed and the  
16           proceedings against him discharged and that he was not over 21 years of age at the time  
17           of the offense, it shall enter such order. The effect of such order shall be to restore such  
18           person in the contemplation of the law to the status he occupied before such arrest or  
19           indictment or information. No person as to whom such order was entered shall be held  
20           thereafter under any provision of any law to be guilty of perjury or otherwise giving a  
21           false statement by reason of his failures to recite or acknowledge such arrest, or  
22           indictment or information, or trial in response to any inquiry made of him for any  
23           purpose.

24           The court shall also order that said conviction and the records relating thereto be  
25           expunged from the records of the court, and direct all law-enforcement agencies bearing  
26           records of the same to expunge their records of the conviction. The clerk shall forward a  
27           certified copy of the order to the sheriff, chief of police or other arresting agency, as  
28           appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,  
29           shall forward such order to the State Bureau of Investigation with a form supplied by  
30           the State Bureau of Investigation. The State Bureau of Investigation shall forward the  
31           court order in like manner to the Federal Bureau of Investigation."

32           **SECTION 4.** G.S. 90-96(f) reads as rewritten:

33           "(f) A person who files a petition for expunction of a criminal record under this  
34           section must pay the clerk of superior court a fee of ~~sixty-five dollars (\$65.00)~~ two  
35           hundred dollars (\$200.00) at the time the petition is filed. ~~Fees collected under this~~  
36           ~~subsection shall be deposited in the General Fund. One hundred dollars (\$100.00) of the~~  
37           fee collected under this subsection shall be remitted to the North Carolina Department  
38           of Justice to pay the costs of the State Bureau of Investigation purging records pursuant  
39           to receipt of an order of expunction. The remaining one hundred dollars (\$100.00) of the  
40           fee shall be remitted to the Administrative Office of the Courts to pay the costs  
41           associated with implementation of the provisions of this section. This subsection does  
42           not apply to petitions filed by an indigent."

43           **SECTION 5.** G.S. 90-113.14(b) reads as rewritten:

1       "(b) Upon the dismissal of such person, and discharge of the proceedings against  
2 him under subsection (a) of this section, such person, if he were not over 21 years of age  
3 at the time of the offense, may apply to the court for an order to expunge from all  
4 official records (other than the confidential file to be retained by the Administrative  
5 Office of the Courts under subsection (c)) all recordation relating to his arrest,  
6 indictment or information, trial, finding of guilty, and dismissal and discharge pursuant  
7 to this section. The applicant shall attach to the application the following:

- 8           (1) An affidavit by the applicant that he has been of good behavior during  
9 the period of probation since the decision to defer further proceedings  
10 on the misdemeanor in question and has not been convicted of any  
11 felony, or misdemeanor, other than a traffic violation, under the laws  
12 of the United States or the laws of this State or any other state;
- 13           (2) Verified affidavits by two persons who are not related to the applicant  
14 or to each other by blood or marriage, that they know the character and  
15 reputation of the petitioner in the community in which he lives, and  
16 that his character and reputation are good;
- 17           (3) ~~Affidavits of the clerk of superior court, chief of police, where  
18 appropriate, and sheriff of the county in which the petitioner was  
19 convicted, and, if different, the county of which the petitioner is a  
20 resident, showing that the applicant has not been convicted of a felony  
21 or misdemeanor other than a traffic violation under the laws of this  
22 State at any time prior to the conviction for the misdemeanor in  
23 question or during the period of probation following the decision to  
24 defer further proceedings on the misdemeanor in question.~~
- 25           (3) An application on a form approved by the Administrative Office of the  
26 Courts requesting and authorizing a State and national criminal record  
27 check by the Department of Justice using any information required by  
28 the Administrative Office of the Courts to identify the individual and a  
29 search of the confidential record of expunctions maintained by the  
30 Administrative Office of the Courts. The application shall be  
31 forwarded to the Department of Justice and to the Administrative  
32 Office of the Courts, which shall conduct the searches and report their  
33 findings to the court.

34       The judge to whom the petition is presented is authorized to call upon a probation  
35 officer for any additional investigation or verification of the petitioner's conduct during  
36 the probationary period deemed desirable.

37       If the court determines, after hearing, that such person was dismissed and the  
38 proceedings against him discharged and that he was not over 21 years of age at the time  
39 of the offense, it shall enter such order. The effect of such order shall be to restore such  
40 person in the contemplation of the law to the status he occupied before such arrest or  
41 indictment or information. No person as to whom such order was entered shall be held  
42 thereafter under any provision of any law to be guilty of perjury or otherwise giving a  
43 false statement by reason of his failures to recite or acknowledge such arrest, or



1 indictment or information, or trial in response to any inquiry made of him for any  
2 purpose.

3 The court shall also order that said conviction and the records relating thereto be  
4 expunged from the records of the court, and direct all law-enforcement agencies bearing  
5 records of the same to expunge their records of the conviction. The clerk shall forward a  
6 certified copy of the order to the sheriff, chief of police or other arresting agency, as  
7 appropriate, and the sheriff, chief of police or other arresting agency, as appropriate,  
8 shall forward such order to the State Bureau of Investigation with a form supplied by  
9 the State Bureau of Investigation. The State Bureau of Investigation shall forward the  
10 court order in like manner to the Federal Bureau of Investigation."

11 **SECTION 6.** G.S. 90-113.14 is amended by adding a new subsection to  
12 read:

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

22 **SECTION 7.** This act becomes effective December 1, 2007, and applies to  
23 applications for expunction of records made on or after that date.