

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

H

1

HOUSE BILL 1023

Short Title: Expunction/Nonviolent Offenses. (Public)

Sponsors: Representative Daughtry (Primary Sponsor).
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee C.

May 22, 2012

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR EXPUNCTION OF NONVIOLENT FELONIES OR
3 NONVIOLENT MISDEMEANORS AFTER FIFTEEN YEARS FOR PERSONS WHO
4 HAVE HAD NO OTHER CONVICTIONS FOR FELONIES OR MISDEMEANORS
5 OTHER THAN TRAFFIC VIOLATIONS UNDER THE LAWS OF THE UNITED
6 STATES, THIS STATE, OR ANY OTHER JURISDICTION, AS RECOMMENDED BY
7 THE LEGISLATIVE RESEARCH COMMISSION.

8 The General Assembly of North Carolina enacts:

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

11 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

12 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent
13 felony" means any misdemeanor or felony except the following:

- 14 (1) A Class A through G felony or a Class A1 misdemeanor.
- 15 (2) An offense that includes assault as an essential element of the offense.
- 16 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of
17 the General Statutes, whether or not the person is currently required to
18 register.
- 19 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b),
20 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3,
21 14-277.3A, 14-321.1.
- 22 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
23 involves methamphetamines, heroin, or possession with intent to sell or
24 deliver or sell and deliver cocaine.
- 25 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
26 which punishment was determined pursuant to G.S. 14-3(c).
- 27 (7) An offense under G.S. 14-401.16.
- 28 (8) Any felony offense in which a commercial motor vehicle was used in the
29 commission of the offense.

30 (b) Notwithstanding any other provision of law, if the person is convicted of more than
31 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
32 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person
33 had already been served with criminal process for the commission of a nonviolent felony or
34 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
35 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction



1 under this section, and the expunction order issued under this section shall provide that the
2 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
3 expunged from the person's record in accordance with this section.

4 (c) A person may file a petition, in the court where the person was convicted, for
5 expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's
6 criminal record if the person has no other misdemeanor or felony convictions, other than a
7 traffic violation, and was convicted of a nonviolent misdemeanor or nonviolent felony that is
8 eligible pursuant to subsection (b) of this section. The petition shall not be filed earlier than 15
9 years after the date of the conviction or when any active sentence, period of probation, and
10 post-release supervision has been served, whichever occurs later. The petition shall contain, but
11 not be limited to, the following:

12 (1) An affidavit by the petitioner that the petitioner has been of good behavior
13 since the completion of any sentence received for the nonviolent
14 misdemeanor or nonviolent felony, and has not been convicted of any other
15 felony or misdemeanor other than a traffic violation under the laws of the
16 United States or the laws of this State or any other state.

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

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

23 (4) An application on a form approved by the Administrative Office of the
24 Courts requesting and authorizing a name-based State and national criminal
25 history record check by the Department of Justice using any information
26 required by the Administrative Office of the Courts to identify the
27 individual, and a search of the confidential record of expunctions maintained
28 by the Administrative Office of the Courts. The application shall be
29 forwarded to the Department of Justice and to the Administrative Office of
30 the Courts, which shall conduct the searches and report their findings to the
31 court.

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

35 Upon filing of the petition, the petition shall be served upon the district attorney of the court
36 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
37 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
38 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
39 additional 30 days to file objection to the petition.

40 The presiding judge is authorized to call upon a probation officer for any additional
41 investigation or verification of the petitioner's conduct since the completion of any sentence
42 received for the nonviolent misdemeanor or nonviolent felony.

43 If the court, after hearing, finds that the petitioner has not previously been granted an
44 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
45 15A-145.4; the petitioner has no other felony or misdemeanor convictions, other than a traffic
46 violation; the petitioner has no outstanding restitution orders or civil judgments representing
47 amounts ordered for restitution entered against the petitioner; and the petitioner was convicted
48 of an offense eligible for expunction under this section and was convicted of, and completed
49 any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years
50 prior to the filing of the petition, it shall order that such person be restored, in the

1 contemplation of the law, to the status the person occupied before such arrest or indictment or
 2 information.

3 (d) No person as to whom an order has been entered pursuant to subsection (c) of this
 4 section shall be held thereafter under any provision of any laws to be guilty of perjury or
 5 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
 6 the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the
 7 provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all
 8 convictions to the certifying Commission, regardless of whether or not the convictions were
 9 expunged pursuant to the provisions of this section.

10 Persons required by State law to obtain a criminal history record check on a prospective
 11 employee shall not be deemed to have knowledge of any convictions expunged under this
 12 section.

13 (e) The court shall also order that the conviction be expunged from the records of the
 14 court and direct all law enforcement agencies bearing record of the same to expunge their
 15 records of the conviction. The clerk shall notify State and local agencies of the court's order, as
 16 provided in G.S. 15A-150.

17 (f) Any other applicable State or local government agency shall expunge from its
 18 records entries made as a result of the conviction ordered expunged under this section. The
 19 agency shall also reverse any administrative actions taken against a person whose record is
 20 expunged under this section as a result of the charges or convictions expunged. This subsection
 21 shall not apply to the Department of Justice for DNA records and samples stored in the State
 22 DNA Database and the State DNA Databank.

23 (g) A person who files a petition for expunction of a criminal record under this section
 24 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
 25 time the petition is filed. Fees collected under this subsection shall be deposited in the General
 26 Fund. This subsection does not apply to petitions filed by an indigent."

27 **SECTION 2.** G.S. 15A-145.4 reads as rewritten:

28 **"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
 29 **the time of the commission of a nonviolent felony.**

30 (a) For purposes of this section, the term "nonviolent felony" means any felony except
 31 the following:

- 32 (1) A Class A through G felony.
 33 (2) A felony that includes assault as an essential element of the offense.
 34 (3) A felony that is an offense ~~for which the convicted offender must register~~
 35 ~~under requiring registration pursuant to Article 27A of Chapter 14 of the~~
 36 ~~General Statutes. Statutes, whether or not the person is currently required to~~
 37 ~~register.~~
 38 (4) ~~A felony that is an offense that did not require registration under Article 27A~~
 39 ~~of Chapter 14 of the General Statutes at the time of the commission of the~~
 40 ~~offense but does require registration on the date the petition to expunge the~~
 41 ~~offense would be filed.~~
 42 (5)(4) ~~A felony charged for any of~~ Any felony offense under the following
 43 sex-related or stalking offenses: G.S. 14-27.7A(b), ~~14-190.6, 14-190.7,~~
 44 14-190.8, 14-202, 14-208.11A, 14-208.18, ~~14-277.3, 14-277.3A, 14-321.1.~~
 45 (6)(5) Any felony offense ~~charged pursuant to in~~ Chapter 90 of the General Statutes
 46 where the offense involves methamphetamines, heroin, or possession with
 47 intent to sell or deliver or sell and deliver cocaine.
 48 (7)(6) A felony offense ~~charged pursuant to under~~ G.S. 14-12.12(b), 14-12.13, or
 49 14-12.14, or any felony offense charged as a felony for which punishment
 50 was determined pursuant to G.S. 14-3(c).
 51 (8)(7) A felony offense ~~charged pursuant to under~~ G.S. 14-401.16.

1 ~~(9)~~(8) ~~A~~ Any felony offense in which a commercial motor vehicle was used in the
2 commission of the offense.

3 (b) Notwithstanding any other provision of law, if the person is convicted of more than
4 one nonviolent felony in the same session of court and none of the nonviolent felonies are
5 alleged to have occurred after the person had already been ~~charged and arrested~~ served with
6 criminal process for the commission of a nonviolent felony, then the multiple nonviolent felony
7 convictions shall be treated as one nonviolent felony conviction under this section, and the
8 expunction order issued under this section shall provide that the multiple nonviolent felony
9 convictions shall be expunged from the person's record in accordance with this section.

10 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
11 commission of the offense and has not previously been convicted of any felony or
12 misdemeanor other than a traffic violation under the laws of the United States or the laws of
13 this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may
14 file a petition in the court where the person was convicted for expunction of the nonviolent
15 felony from the person's criminal record. The petition shall not be filed earlier than four years
16 after the date of the conviction or when any active sentence, period of probation, and
17 post-release supervision has been served, whichever occurs later. The person shall also perform
18 at least 100 hours of community service, preferably related to the conviction, before filing a
19 petition for expunction under this section. The petition shall contain the following:

- 20 (1) An affidavit by the petitioner that the petitioner has been of good moral
21 character since the date of conviction of the nonviolent felony in question
22 and has not been convicted of any other felony or any misdemeanor other
23 than a traffic violation under the laws of the United States or the laws of this
24 State or any other state.
- 25 (2) Verified affidavits of two persons who are not related to the petitioner or to
26 each other by blood or marriage, that they know the character and reputation
27 of the petitioner in the community in which the petitioner lives and that the
28 petitioner's character and reputation are good.
- 29 (3) A statement that the petition is a motion in the cause in the case wherein the
30 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 history
33 record check by the Department of Justice using any information required by
34 the Administrative Office of the Courts to identify the individual; (ii) a
35 search by the Department of Justice for any outstanding warrants or pending
36 criminal cases; and (iii) a search of the confidential record of expunctions
37 maintained by the Administrative Office of the Courts. The application shall
38 be forwarded to the Department of Justice and to the Administrative Office
39 of the Courts, which shall conduct the searches and report their findings to
40 the court.
- 41 (5) An affidavit by the petitioner that no restitution orders or civil judgments
42 representing amounts ordered for restitution entered against the petitioner
43 are outstanding.
- 44 (6) An affidavit by the petitioner that the petitioner has performed at least 100
45 hours of community service since the conviction for the nonviolent felony.
46 The affidavit shall include a list of the community services performed, a list
47 of the recipients of the services, and a detailed description of those services.
- 48 (7) An affidavit by the petitioner that the petitioner possesses a high school
49 diploma, a high school graduation equivalency certificate, or a General
50 Education Development degree.

1 The petition shall be served upon the district attorney of the court wherein the case was
2 tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file
3 any objection thereto and shall be duly notified as to the date of the hearing of the petition. The
4 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
5 victim of the request for expunction prior to the date of the hearing.

6 (d) The court in which the petition was filed shall take the following steps and shall
7 consider the following issues in rendering a decision upon a petition for expunction of records
8 of a nonviolent felony under this section:

- 9 (1) Call upon a probation officer for additional investigation or verification of
10 the petitioner's conduct during the four-year period since the date of
11 conviction of the nonviolent felony in question.
- 12 (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile
13 records remain separate from adult records and files and are withheld from
14 public inspection as provided under Article 30 of Chapter 7B of the General
15 Statutes.
- 16 (3) Review the amount of restitution made by the petitioner to the victim of the
17 nonviolent felony to be expunged and give consideration to whether or not
18 restitution was paid in full.
- 19 (4) Review any other information the court deems relevant, including, but not
20 limited to, affidavits or other testimony provided by law enforcement
21 officers, district attorneys, and victims of nonviolent felonies committed by
22 the petitioner.

23 (e) The court may order that the person be restored, in the contemplation of the law, to
24 the status the person occupied before the arrest or indictment or information if the court finds
25 all of the following after a hearing:

- 26 (1) The petitioner has remained of good moral character and has been free of
27 conviction of any felony or misdemeanor, other than a traffic violation, for
28 four years from the date of conviction of the nonviolent felony in question or
29 any active sentence, period of probation, or post-release supervision has
30 been served, whichever is later.
- 31 (2) The petitioner has not previously been convicted of any felony or
32 misdemeanor other than a traffic violation under the laws of the United
33 States or the laws of this State or any other state.
- 34 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 35 (4) The petitioner has no outstanding restitution orders or civil judgments
36 representing amounts ordered for restitution entered against the petitioner.
- 37 (5) The petitioner was less than 18 years old at the time of the commission of
38 the offense in question.
- 39 (6) The petitioner has performed at least 100 hours of community service since
40 the time of the conviction and possesses a high school diploma, a high
41 school graduation equivalency certificate, or a General Education
42 Development degree.
- 43 (7) The search of the confidential records of expunctions conducted by the
44 Administrative Office of the Courts shows that the petitioner has not been
45 previously granted an expunction.

46 (f) No person as to whom an order has been entered pursuant to subsection (e) of this
47 section shall be held thereafter under any provision of any laws to be guilty of perjury or
48 otherwise giving a false statement by reason of that person's failure to recite or acknowledge
49 the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the
50 provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all

1 felony convictions to the certifying Commission regardless of whether or not the felony
2 convictions were expunged pursuant to the provisions of this section.

3 Persons required by State law to obtain a criminal history record check on a prospective
4 employee shall not be deemed to have knowledge of any convictions expunged under this
5 section.

6 (g) The court shall also order that the nonviolent felony conviction be expunged from
7 the records of the court and direct all law enforcement agencies bearing record of the same to
8 expunge their records of the conviction. The clerk shall notify State and local agencies of the
9 court's order as provided in G.S. 15A-150.

10 (h) Any other applicable State or local government agency shall expunge from its
11 records entries made as a result of the conviction ordered expunged under this section. The
12 agency shall also reverse any administrative actions taken against a person whose record is
13 expunged under this section as a result of the charges or convictions expunged. This subsection
14 shall not apply to the Department of Justice for DNA records and samples stored in the State
15 DNA Database and the State DNA Databank.

16 (i) Any person eligible for expunction of a criminal record under this section shall be
17 notified about the provisions of this section by the probation officer assigned to that person. If
18 no probation officer is assigned, notification of the provisions of this section shall be provided
19 by the court at the time of the conviction of the felony which is to be expunged under this
20 section."

21 **SECTION 3.** G.S. 15A-145(d1) is repealed.

22 **SECTION 4.** G.S. 15A-146 reads as rewritten:

23 **"§ 15A-146. Expunction of records when charges are dismissed or there are findings of**
24 **not guilty.**

25 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
26 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
27 dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the
28 court of the county where the charge was brought for an order to expunge from all official
29 records any entries relating to his apprehension or trial. The court shall hold a hearing on the
30 application and, upon finding that the person had not previously received an expungement
31 under this section, ~~G.S. 15A-145, G.S. 15A-145.1, 15A-145.2, or 15A-145.3,~~ 15A-145.3,
32 15A-145.4, or 15A-145.5, and that the person had not previously been convicted of any felony
33 under the laws of the United States, this State, or any other state, the court shall order the
34 expunction. No person as to whom such an order has been entered shall be held thereafter
35 under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a
36 false statement or response to any inquiry made for any purpose, by reason of his failure to
37 recite or acknowledge any expunged entries concerning apprehension or trial.

38 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
39 offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,
40 then a person may apply to have each of those charges expunged if the offenses occurred within
41 the same 12-month period of time or if the charges are dismissed or findings are made at the
42 same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court"
43 shall mean one week for superior court and one day for district court. There is no requirement
44 that the multiple offenses arise out of the same transaction or occurrence or that the multiple
45 offenses were consolidated for judgment. The court shall hold a hearing on the application. If
46 the court finds (i) that the person had not previously received an expungement under this
47 subsection, or that any previous expungement received under this subsection occurred prior to
48 October 1, 2005 and was for an offense that occurred within the same 12-month period of time,
49 or was dismissed or findings made at the same term of court, as the offenses that are the subject
50 of the current application, (ii) that the person had not previously received an expungement
51 under ~~G.S. 15A-145, 15A-145.1, 15A-145.2, or 15A-145.3,~~ 15A-145.3, 15A-145.4, or

1 15A-145.5, and (iii) that the person had not previously been convicted of any felony under the
2 laws of the United States, this State, or any other state, the court shall order the expunction. No
3 person as to whom such an order has been entered shall be held thereafter under any provision
4 of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or
5 response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge
6 any expunged entries concerning apprehension or trial.

7 (b) The court may also order that the said entries, including civil revocations of drivers
8 licenses as a result of the underlying charge, shall be expunged from the records of the court,
9 and direct all law-enforcement agencies, the Division of Adult Correction of the Department of
10 Public Safety, the Division of Motor Vehicles, and any other State or local government
11 agencies identified by the petitioner as bearing record of the same to expunge their records of
12 the entries, including civil revocations of drivers licenses as a result of the underlying charge
13 being expunged. This subsection does not apply to civil or criminal charges based upon the
14 civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and
15 local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a
16 certified copy of the order to the Division of Motor Vehicles for the expunction of a civil
17 revocation provided the underlying criminal charge is also expunged. The civil revocation of a
18 drivers license shall not be expunged prior to a final disposition of any pending civil or criminal
19 charge based upon the civil revocation. The costs of expunging the records, as required under
20 G.S. 15A-150, shall not be taxed against the petitioner.

21 (b1) Any person entitled to expungement under this section may also apply to the court
22 for an order expunging DNA records when the person's case has been dismissed by the trial
23 court and the person's DNA record or profile has been included in the State DNA Database and
24 the person's DNA sample is stored in the State DNA Databank. A copy of the application for
25 expungement of the DNA record or DNA sample shall be served on the district attorney for the
26 judicial district in which the felony charges were brought not less than 20 days prior to the date
27 of the hearing on the application. If the application for expungement is granted, a certified copy
28 of the trial court's order dismissing the charges shall be attached to an order of expungement.
29 The order of expungement shall include the name and address of the defendant and the
30 defendant's attorney and shall direct the SBI to send a letter documenting expungement as
31 required by subsection (b2) of this section.

32 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this
33 section, the SBI shall purge the DNA record and all other identifying information from the
34 State DNA Database and the DNA sample stored in the State DNA Databank covered by the
35 order, except that the order shall not apply to other offenses committed by the individual that
36 qualify for inclusion in the State DNA Database and the State DNA Databank. A letter
37 documenting expungement of the DNA record and destruction of the DNA sample shall be sent
38 by the SBI to the defendant and the defendant's attorney at the address specified by the court in
39 the order of expungement.

40 (c) The clerk shall notify State and local agencies of the court's order as provided in
41 G.S. 15A-150."

42 **SECTION 5.** G.S. 15A-151(a) reads as rewritten:

43 **"§ 15A-151. Confidential agency files; exceptions to expunction.**

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

- 47 (1) To a judge of the General Court of Justice of North Carolina for the purpose
48 of ascertaining whether a person charged with an offense has been
49 previously granted a discharge or an expunction.
- 50 (2) To a person requesting confirmation of the person's own discharge or
51 expunction, as provided in G.S. 15A-152.

- 1 (3) To the General Court of Justice of North Carolina in response to a subpoena
2 or other court order issued pursuant to a civil action under G.S. 15A-152.
3 (4) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~
4 G.S. 15A-145.4 or G.S. 15A-145.5, to State and local law enforcement
5 agencies for employment purposes only.
6 (5) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~
7 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Criminal Justice
8 Education and Training Standards Commission for certification purposes
9 only.
10 (6) If the criminal record was expunged pursuant to ~~G.S. 15A-145.4,~~
11 G.S. 15A-145.4 or G.S. 15A-145.5, to the North Carolina Sheriffs'
12 Education and Training Standards Commission for certification purposes
13 only."

14 **SECTION 6.** G.S. 17C-13(b) reads as rewritten:

15 "(b) Notwithstanding ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, the
16 Commission may gain access to a person's felony conviction records, including those
17 maintained by the Administrative Office of the Courts in its confidential files containing the
18 names of persons granted expunctions. The Commission may deny, suspend, or revoke a
19 person's certification based solely on that person's felony conviction, whether or not that
20 conviction was expunged."

21 **SECTION 7.** G.S. 17E-12(b) reads as rewritten:

22 "(b) Notwithstanding ~~G.S. 15A-145.4,~~ G.S. 15A-145.4 or G.S. 15A-145.5, the
23 Commission may gain access to a person's felony conviction records, including those
24 maintained by the Administrative Office of the Courts in its confidential files containing the
25 names of persons granted expunctions. The Commission may deny, suspend, or revoke a
26 person's certification based solely on that person's felony conviction, whether or not that
27 conviction was expunged."

28 **SECTION 8.** Sections 2, 3, and 4 of this act become effective December 1, 2012,
29 and apply to petitions filed on or after that date, but petitions filed prior to that date are not
30 abated by this act. The remainder of this act becomes effective December 1, 2012.