

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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HOUSE BILL 675

Short Title: Amend Expunction Law. (Public)

Sponsors: Representatives Haire and Harrison (Primary Sponsors).  
For a complete list of Sponsors, see Bill Information on the NCGA Web Site.

Referred to: Judiciary Subcommittee B.

April 7, 2011

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT A PERSON CONVICTED OF A CERTAIN NONVIOLENT  
3 CRIMINAL OFFENSE WHOSE CITIZENSHIP RIGHTS HAVE BEEN RESTORED  
4 FOR AT LEAST SEVEN YEARS AND WHO CONTINUES TO ABIDE BY THE LAW  
5 MAY HAVE THE OFFENSE EXPUNGED FROM HIS OR HER RECORD.

6 The General Assembly of North Carolina enacts:

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

9 **"§ 15A-149.1. Expunction of records for convictions of certain criminal offenses if**  
10 **petitioner's citizenship rights have been restored for at least seven years and**  
11 **there are no subsequent criminal convictions.**

12 (a) Definitions.— The following definitions apply in this section:

13 (1) Criminal offense. — A misdemeanor, Class H felony, or Class I felony;  
14 however, the term does not include any of the following:

15 a. An offense that includes assault as an essential element of the  
16 offense, other than a violation of G.S. 14-33(a) or (b).

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

19 c. An offense that includes the possession or use of a firearm as an  
20 essential element of the offense.

21 d. An offense for which the offender was armed with or used a firearm.

22 e. An offense that is trafficking under G.S. 90-95(h).

23 f. An offense that is a breaking or entering offense that involves a  
24 residence or dwelling.

25 (2) Traffic violation. — The term does not include felony speeding to elude arrest  
26 or felony vehicular homicide.

27 (b) Eligibility to Petition for Expunction. — A person who was convicted of a criminal  
28 offense may petition the court in which the person was convicted to expunge the criminal  
29 offense from the person's criminal record if all of the following criteria are met:

30 (1) With the exception of the criminal offense for which the petition has been  
31 filed, the person has never been convicted of any felony or misdemeanor  
32 other than a traffic violation under the laws of the United States, the laws of  
33 this State, or the laws of any other state.

34 (2) The person has no pending felony or misdemeanor charges other than a  
35 traffic violation in federal court, a court of this State, or any other state court.



- 1           (3)   The person has no outstanding restitution orders or civil judgments  
2           representing amounts ordered for restitution entered against him or her.  
3           (4)   The person has no previous expunction under this section.  
4           (5)   The person's citizenship rights have been restored pursuant to Chapter 13 of  
5           the General Statutes for a period of at least seven years.

6           (c)   Time Frame for Filing Petition; Contents of Petition. – A petition to expunge a  
7           criminal offense under this section shall not be filed earlier than seven years after the date that  
8           the person's citizenship rights have been restored pursuant to Chapter 13 of the General  
9           Statutes. The petition shall contain the following:

- 10           (1)   An affidavit by the petitioner that the petitioner's citizenship rights have  
11           been restored pursuant to Chapter 13 of the General Statutes and that the  
12           petitioner has been of good behavior for the seven-year period since the  
13           restoration of the petitioner's citizenship rights and has not been convicted of  
14           any felony or misdemeanor other than a traffic violation under the laws of  
15           the United States or the laws of this State or any other state.  
16           (2)   Verified affidavits of two persons who are not related to the petitioner or to  
17           each other by blood or marriage, that they know the character and reputation  
18           of the petitioner in the community in which the petitioner lives, and that the  
19           person's character and reputation are good.  
20           (3)   A statement that the petition is a motion in the cause in the case wherein the  
21           petitioner was convicted.  
22           (4)   An application on a form approved by the Administrative Office of the  
23           Courts requesting and authorizing a State and national criminal history  
24           record check by the Department of Justice using any information required by  
25           the Administrative Office of the Courts to identify the individual and a  
26           search of the confidential record of expunctions maintained by the  
27           Administrative Office of the Courts. The application shall be forwarded to  
28           the Department of Justice and to the Administrative Office of the Courts,  
29           which shall conduct the searches and report their findings to the court.  
30           (5)   An affidavit by the petitioner that no restitution orders or civil judgments  
31           representing amounts ordered for restitution entered against the petitioner  
32           are outstanding.  
33           (6)   A list of the occupational licensing boards to be notified of the expunction  
34           on behalf of the petitioner, if the expunction is ordered by the court. The list  
35           shall be limited to those occupational licensing boards that have denied the  
36           petitioner an occupational license based on the petitioner's conviction of the  
37           criminal offense.

38           (d)   Service of Petition on District Attorney. – The petition shall be served upon the  
39           district attorney of the court where the case was tried resulting in conviction. The district  
40           attorney shall have 30 days thereafter to file any objection to the petition and shall be notified  
41           as to the date of the hearing of the petition.

42           (e)   Additional Investigation or Verification of Petitioner's Conduct. – The judge to  
43           whom the petition is presented may call upon a probation officer for any additional  
44           investigation or verification of the petitioner's conduct for the period of time extending from the  
45           completion of sentence by petitioner to the date of the petition that the judge deems desirable.

46           (f)   Hearing and Determination of Whether to Grant Petition. – The court shall conduct  
47           a hearing to determine whether the petition for expunction should be granted. At the hearing,  
48           the court may consider any information the court deems relevant that is provided by the  
49           petitioner, law enforcement officers, the district attorney, and victims of the criminal offense  
50           committed by the petitioner. Except as provided otherwise by this subsection, if the court finds  
51           that the criteria set forth in subsection (b) of this section have been met, then the court shall

1 order that the petitioner be restored, in the contemplation of the law, to the status the petitioner  
2 occupied before the arrest, indictment, conviction, or information for the criminal offense. The  
3 court shall not order an expunction under this section if the court determines that sufficient  
4 cause exists to deny the petition.

5 (g) Judicial Directive to State and Local Government Agencies to Expunge Relevant  
6 Records. – If the court finds that the petition shall be granted and orders the criminal offense  
7 conviction expunged, the court shall also direct all law enforcement agencies, the Department  
8 of Correction, the Division of Motor Vehicles, and any other State or local government  
9 agencies identified by the petitioner as bearing record of the same to expunge their records of  
10 the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall  
11 notify State and local agencies of the court's order as provided in G.S. 15A-150.

12 (h) No Legal Requirement to Disclose Expunged Criminal Offense Except in Certain  
13 Circumstances. – No person whose record is ordered expunged pursuant to this section shall be  
14 held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a  
15 false statement by reason of his or her failure to recite or acknowledge such arrest, indictment,  
16 conviction, information, trial, or response to any inquiry made of the person for any purpose.

17 However, a person pursuing certification under the provisions of Chapter 17C or Chapter  
18 17E of the General Statutes shall disclose any and all felony convictions to the certifying  
19 commission regardless of whether or not the felony convictions were expunged under this  
20 section.

21 (i) Limit Number of Expunctions; Calculation of Prior Record Points if Subsequent  
22 Criminal Conviction. – Expunction of records may occur only once under this section with  
23 respect to any person. If a person's record is expunged pursuant to this section and the person is  
24 convicted of a subsequent felony or misdemeanor after the expunction, other than a traffic  
25 violation, then the court shall include the expunged offense in the calculation of prior record  
26 points when imposing the sentence for the subsequent felony or misdemeanor.

27 (j) Fees. – A person who files a petition for expunction of a criminal record under this  
28 section shall pay the clerk of superior court a fee of one hundred fifty dollars (\$150.00) at the  
29 time the petition is filed. Seventy-five dollars (\$75.00) of the fee collected under this subsection  
30 shall be remitted to the North Carolina Department of Justice to pay the costs of the State  
31 Bureau of Investigation purging records pursuant to receipt of an order of expunction. The  
32 remaining seventy-five dollars (\$75.00) of the fee shall be remitted to the Administrative Office  
33 of the Courts to pay the costs associated with implementation of the provisions of this section.  
34 This subsection does not apply to petitions filed by an indigent."

35 **SECTION 2.** G.S. 15A-151(a) reads as rewritten:

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

- 39 (1) To a judge of the General Court of Justice of North Carolina for the purpose  
40 of ascertaining whether a person charged with an offense has been  
41 previously granted a discharge or an expunction.
- 42 (2) To a person requesting confirmation of the person's own discharge or  
43 expunction, as provided in G.S. 15A-152.
- 44 (3) To the General Court of Justice of North Carolina in response to a subpoena  
45 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 46 (4) To federal, State, and local law enforcement agencies for employment  
47 purposes only, and only if the expunction was ordered pursuant to  
48 G.S. 15A-149.1.
- 49 (5) To the North Carolina Criminal Justice Education and Training Standards  
50 Commission for certification purposes only, and only if the expunction was  
51 ordered pursuant to G.S. 15A-149.1.

1           (6)    To the North Carolina Sheriffs' Education and Training Standards  
2                    Commission for certification purposes only, and only if the expunction was  
3                    ordered pursuant to G.S. 15A-149.1."

4           **SECTION 3.** This act becomes effective December 1, 2011.