

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2011

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SENATE DRS75017-LHF-67 (01/26)

Short Title: Expunge Nonviolent Crimes. (Public)

Sponsors: Senator Kinnaird.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN  
NONVIOLENT CRIMINAL OFFENSES UPON APPLICATION AND A FEE, TO  
ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT  
AGENCIES AND OTHER SPECIFIED AGENCIES FOR EMPLOYMENT AND  
LICENSING PURPOSES, TO REQUIRE THOSE AGENCIES TO MAINTAIN THE  
CONFIDENTIALITY OF THE EXPUNGED INFORMATION, AND TO MAKE  
CONFORMING CHANGES.

The General Assembly of North Carolina enacts:

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

**"§ 15A-145.4. Expunction of records for conviction of certain nonviolent criminal  
offenses.**

(a) A person may file a petition in the court where the person was convicted for  
expunction of a felony conviction from the person's criminal record if all of the following  
criteria are met:

(1) The person, at the time of the felony offense, had not previously been  
convicted of any felony or misdemeanor other than a traffic violation under  
the laws of the United States, the laws of this State, or any other state.

(2) The conviction is for a felony violation of any of the following:

a. G.S. 14-54, where the intent is to commit a larceny that involves a  
thing of value of less than three hundred fifty dollars (\$350.00).

b. G.S. 14-56.

c. G.S. 14-71.1.

d. G.S. 14-100, where the thing of value is less than fifty thousand  
dollars (\$50,000).

e. G.S. 90-95(d)(4).

(3) The person, at the time of the petition, has no convictions other than the  
conviction to be expunged and traffic violations under the laws of the United  
States, the laws of this State, or any other state.

(4) The person has no outstanding warrants or pending criminal cases.

(b) The petition may not be filed earlier than 10 years after the date of the felony  
conviction or when any active sentence, period of probation, and post-release supervision has  
been served, whichever occurs later. The petition shall contain all of the following:

(1) An affidavit by the petitioner stating all of the following:



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

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

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

21          (g)    The court also shall order that the felony conviction be expunged from the records  
22          of the court and direct all law enforcement agencies bearing record of the same to expunge that  
23          agency's records of the felony conviction. The clerk shall notify State and local government  
24          agencies of the court's order as provided in G.S. 15A-150.

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

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

42          (j)    Persons required by State law to obtain a criminal background check on  
43          a prospective employee shall not be deemed to have knowledge of any convictions expunged  
44          under this section."

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

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

- 49                (1)    To a judge of the General Court of Justice of North Carolina for the purpose  
50                of ascertaining whether a person charged with an offense has been  
51                previously granted a discharge or an expunction.

- 1 (2) To a person requesting confirmation of the person's own discharge or  
2 expunction, as provided in G.S. 15A-152.
- 3 (3) To the General Court of Justice of North Carolina in response to a subpoena  
4 or other court order issued pursuant to a civil action under G.S. 15A-152.
- 5 (4) To federal, State, and local law enforcement agencies for employment  
6 purposes only.
- 7 (5) To the North Carolina Criminal Justice Education and Training Standards  
8 Commission for certification purposes only.
- 9 (6) To the North Carolina Sheriffs' Education and Training Standards  
10 Commission for certification purposes only.
- 11 (7) To federally insured depository institutions for employment purposes only.
- 12 (8) To the North Carolina State Bar and the Board of Law Examiners for  
13 licensing purposes only.
- 14 (9) To the North Carolina State Board of Certified Public Accountant Examiners  
15 for licensing purposes only.
- 16 (10) To local boards of education for employment purposes only.
- 17 (11) To the Department of Health and Human Services for licensing purposes,  
18 employment purposes, and placement purposes if a criminal history check is  
19 mandated for the license or placement.
- 20 (12) To the North Carolina Medical Board for licensing purposes only.
- 21 (13) To the North Carolina Real Estate Commission for licensing purposes only.
- 22 (14) To the North Carolina Appraisal Board for licensing purposes only."

23 **SECTION 3.** G.S. 17C-13 reads as rewritten:

24 **"§ 17C-13. ~~Pardons.~~Pardons; expunctions.**

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

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

35 **SECTION 4.** G.S. 17E-12 reads as rewritten:

36 **"§ 17E-12. ~~Pardons.~~Pardons; expunctions.**

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

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

47 **SECTION 5.** This act becomes effective December 1, 2011, and applies to  
48 applications for expunction of records made on or after that date.

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