

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2011

S

1

SENATE BILL 70

Short Title: Expunge Nonviolent Crimes. (Public)

Sponsors: Senators Kinnaird; Atwater, D. Berger, Graham, Jenkins, Jones, Mansfield, Robinson, Vaughan, Walters, and White.

Referred to: Judiciary I.

February 16, 2011

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE EXPUNCTION OF CONVICTIONS FOR CERTAIN
3 NONVIOLENT CRIMINAL OFFENSES UPON APPLICATION AND A FEE, TO
4 ALLOW DISCLOSURE OF EXPUNGED INFORMATION TO LAW ENFORCEMENT
5 AGENCIES AND OTHER SPECIFIED AGENCIES FOR EMPLOYMENT AND
6 LICENSING PURPOSES, TO REQUIRE THOSE AGENCIES TO MAINTAIN THE
7 CONFIDENTIALITY OF THE EXPUNGED INFORMATION, AND TO MAKE
8 CONFORMING CHANGES.

9 The General Assembly of North Carolina enacts:

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

12 **"§ 15A-145.4. Expunction of records for conviction of certain nonviolent criminal**
13 **offenses.**

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

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

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

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

23 b. G.S. 14-56.

24 c. G.S. 14-71.1.

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

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

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

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

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

35 (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.

49