

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 491
PROPOSED COMMITTEE SUBSTITUTE S491-PCS35335-SA-47

Short Title: Expunge Nonviolent Crimes.

(Public)

Sponsors:

Referred to:

March 10, 2009

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 AND TO REQUIRE THOSE AGENCIES TO MAINTAIN THE
CONFIDENTIALITY OF THE EXPUNGED INFORMATION, AND TO MAKE
CONFORMING CHANGES TO EXISTING EXPUNCTION STATUTES.

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-150. 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.

(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:



* S 4 9 1 - P C S 3 5 3 3 5 - S A - 4 7 *

- 1 a. That the petitioner has been of good moral character for the 10-year
2 period since the date of 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 restitution orders or civil judgments
7 representing amounts ordered for restitution entered against the
8 petitioner outstanding.
- 9 (2) Verified affidavits of two persons, who are not related to the petitioner or to
10 each other by blood or marriage and were not involved in the actions giving
11 rise to the felony conviction in question, that:
- 12 a. The person knows the character and reputation of the petitioner in the
13 community in which the petitioner lives.
- 14 b. The petitioner's character and reputation are good.
- 15 c. The petitioner is and has been of good moral character for the
16 10-year period since the date of the felony conviction in question.
- 17 (3) A statement that the petition is a motion in the cause in the case wherein the
18 petitioner was convicted.
- 19 (4) An application on a form approved by the Administrative Office of the
20 Courts requesting and authorizing all of the following:
- 21 a. A State and national criminal record check by the Department of
22 Justice using any information required by the Administrative Office
23 of the Courts to identify the individual.
- 24 b. A search by the Department of Justice for any outstanding warrants
25 or pending criminal cases.
- 26 c. A search of the confidential record of expunctions maintained by the
27 Administrative Office of the Courts.
- 28 (c) The petition shall be served upon the district attorney of the court wherein the case
29 was tried resulting in conviction. The district attorney shall have 30 days thereafter in which to
30 file any objection to the petition and shall be duly notified as to the date of the hearing on the
31 petition. The district attorney shall make his or her best efforts to contact the victim, if any, to
32 notify the victim of the request for expunction prior to the date of the hearing. The application
33 required by subdivision (b)(4) of this section shall be forwarded to the Department of Justice
34 and to the Administrative Office of the Courts, which shall conduct the searches and report
35 their findings to the court.
- 36 (d) The court in which the petition was filed may take any of the following steps and
37 may consider at least the following issues in rendering a decision upon a petition for
38 expunction of records of a felony conviction under this section:
- 39 (1) Call upon a probation officer for additional investigation or verification of
40 the petitioner's conduct during the 10-year period since the date of
41 conviction of the felony conviction in question.
- 42 (2) Review the results of the State and national criminal record check by the
43 Department of Justice and Administrative Office of the Courts.
- 44 (3) Review the amount of restitution, if any, made by the petitioner to the victim
45 of the felony conviction to be expunged and give consideration to whether or
46 not restitution was paid in full.
- 47 (4) Review any other information the court deems relevant, including affidavits
48 or other testimony provided by law enforcement officers, district attorneys,
49 and victims of the felony committed by the petitioner.

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

4 (1) The petitioner has remained of good moral character 10 years from the date
5 of conviction of the felony in question or any active sentence, period of
6 probation, or post-release supervision has been served, whichever is later.

7 (2) The petitioner has not previously been convicted of any felony or
8 misdemeanor other than a traffic violation under the laws of the United
9 States, the laws of this State, or any other state.

10 (3) The petitioner has no outstanding warrants or pending criminal cases.

11 (4) The petitioner has no outstanding restitution orders or civil judgments
12 representing amounts ordered for restitution entered against the petitioner.

13 (5) The search of the confidential records of expunctions conducted by the
14 Administrative Office of the Courts shows that the petitioner has not been
15 previously granted an expunction.

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

23 (g) The court also shall order that the felony conviction be expunged from the records
24 of the court and direct all law enforcement agencies bearing record of the same to expunge that
25 agency's records of the felony conviction. The clerk shall forward a certified copy of the order
26 to the sheriff, chief of police, or other arresting law enforcement agency. The sheriff, chief of
27 police, or head of any other arresting law enforcement agency then shall transmit the copy of
28 the order with a form supplied by the State Bureau of Investigation to the State Bureau of
29 Investigation, and the State Bureau of Investigation shall forward the order to the Federal
30 Bureau of Investigation.

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

40 (i) The clerk of superior court in each county in North Carolina shall, as soon as
41 practicable after each term of court in the clerk's county, file with the Administrative Office of
42 the Courts the names of those persons granted expunctions under this section, and the
43 Administrative Office of the Courts shall maintain a confidential file containing the names of
44 persons granted expunctions. The information contained in the file shall be disclosed only as
45 follows:

46 (1) To judges of the General Court of Justice of North Carolina for the purpose
47 of ascertaining whether any person charged with an offense has been
48 previously granted a discharge.

49 (2) To federal, State, and local law enforcement agencies for employment
50 purposes only.

- 1 (3) To the North Carolina Criminal Justice Education and Training Standards
2 Commission for certification purposes only.
3 (4) To the North Carolina Sheriffs' Education and Training Standards
4 Commission for certification purposes only.
5 (5) To federally insured depository institutions for employment purposes only.
6 (6) To the North Carolina State Bar and the Board of Law Examiners for
7 licensing purposes only.
8 (7) To the North Carolina State Board of Certified Public Accountant Examiners
9 for licensing purposes only.
10 (8) To local boards of education for employment purposes only.
11 (9) To the Department of Health and Human Services for licensing purposes,
12 employment purposes, and placement purposes if a criminal history check is
13 mandated for the license or placement.
14 (10) To the North Carolina Medical Board for licensing purposes only.
15 (11) To the North Carolina Real Estate Commission for licensing purposes only.
16 (12) To the North Carolina Appraisal Board for licensing purposes only.

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

25 (k) Persons required by State law to obtain a criminal background check on
26 a prospective employee shall not be deemed to have knowledge of any convictions expunged
27 under this section."

28 **SECTION 2.** G.S. 17C-13 reads as rewritten:

29 "**§ 17C-13. Pardons.**

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

35 (b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's
36 felony conviction records, including those maintained by the Administrative Office of the
37 Courts in its confidential files containing the names of persons granted expunctions. The
38 Commission may deny, suspend, or revoke a person's certification based solely on that person's
39 felony conviction, whether or not the felony conviction was expunged."

40 **SECTION 3.** G.S. 17E-12 reads as rewritten:

41 "**§ 17E-12. Pardons.**

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

47 (b) Notwithstanding G.S. 15A-150, the Commission may gain access to a person's
48 felony conviction records, including those maintained by the Administrative Office of the
49 Courts in its confidential files containing the names of persons granted expunctions. The
50 Commission may deny, suspend, or revoke a person's certification based solely on that person's
51 felony conviction, whether or not the felony conviction was expunged."

1 **SECTION 4.** This act becomes effective December 1, 2009, and applies to
2 applications for expunction of records made on or after that date.