

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1084
Committee Substitute Favorable 4/21/05
Committee Substitute #2 Favorable 6/30/05

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors:

Referred to:

April 4, 2005

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD
3 MAY BE EXPUNGED OF NONVIOLENT FELONIES.

4 The General Assembly of North Carolina enacts:

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

7 "§ 15A-149. Expunction of records for first offenders who are under 18 years of
8 age at the time of the commission of a nonviolent felony.

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

11 (1) A Class A through G felony.

12 (2) A felony that includes assault as an essential element of the offense;
13 and

14 (3) A felony that is an offense for which the convicted offender must
15 register under Article 27A of Chapter 14 of the General Statutes.

16 (b) Notwithstanding any other provision of law, if a person is convicted of more
17 than one nonviolent felony in the same session of court, then the multiple nonviolent
18 felony convictions shall be treated as one nonviolent felony conviction under this
19 section, and the expunction order issued under this section shall provide that the
20 multiple convictions shall be expunged from the person's record in accordance with this
21 section.

22 (c) Whenever any person who had not yet attained the age of 18 years at the time
23 of the offense and has not previously been convicted of any felony or misdemeanor
24 other than a traffic violation under the laws of the United States, the laws of this State,
25 or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file
26 a petition in the court where the person was convicted for expunction of the nonviolent
27 felony from the person's criminal record. The petition cannot be filed earlier than two
28 years after the date of the conviction or when any active sentence, period of probation,

1 and post-release supervision has been served, whichever occurs later. The person shall
2 also perform at least 100 hours of community service, preferably related to the
3 conviction, before filing a petition for expunction under this section. The petition shall
4 contain, but not be limited to, the following:

5 (1) An affidavit by the petitioner that he or she has been of good behavior
6 for the two-year period since the date of conviction of the nonviolent
7 felony in question and has not been convicted of any felony or
8 misdemeanor other than a traffic violation under the laws of the United
9 States or the laws of this State or any other state.

10 (2) Verified affidavits of two persons who are not related to the petitioner
11 or to each other by blood or marriage that they know the character and
12 reputation of the petitioner in the community in which he or she lives
13 and that the petitioner's character and reputation are good.

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

16 (4) An application on a form approved by the Administrative Office of the
17 Courts requesting and authorizing a State and national criminal record
18 check by the Department of Justice using any information required by
19 the Administrative Office of the Courts to identify the individual and a
20 search of the confidential records of expunctions maintained by the
21 Administrative Office of the Courts. The application shall be
22 forwarded to the Department of Justice and to the Administrative
23 Office of the Courts to conduct the searches and report the findings to
24 the court.

25 (5) An affidavit by the petitioner that no restitution orders or civil
26 judgments representing amounts ordered for restitution entered against
27 him or her are outstanding.

28 (6) An affidavit by the petitioner that the petitioner has performed at least
29 100 hours of community service since the conviction for the
30 nonviolent felony. The affidavit shall include a list of the community
31 services performed, a list of the recipients of the services, and a
32 detailed description of those services.

33 The petition shall be served upon the district attorney of the court wherein the case
34 was tried resulting in conviction. The district attorney shall have 10 days thereafter in
35 which to file any objection thereto and shall be duly notified as to the date of the
36 hearing of the petition.

37 The judge to whom the petition is presented is authorized to call upon a probation
38 officer for any additional investigation or verification of the petitioner's conduct during
39 the two-year period that the judge deems desirable.

40 (d) The court shall order that the person be restored, in the contemplation of the
41 law, to the status the person occupied before such arrest or indictment or information if
42 the court finds all of the following after a hearing:

43 (1) The petitioner has remained of good behavior and has been free of
44 conviction of any felony or misdemeanor, other than a traffic violation,

1 for two years from the date of conviction of the nonviolent felony in
2 question or any active sentence, period of probation, or post-release
3 supervision has been served, whichever is later.

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

7 (3) The petitioner has no outstanding restitution orders or civil judgments
8 representing amounts ordered for restitution entered against him or
9 her.

10 (4) The petitioner was less than 18 years old at the time of the commission
11 of the offense in question.

12 (5) The petitioner has performed at least 100 hours of community service
13 since the time of the conviction.

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

17 No person as to whom such order has been entered shall be held thereafter under any
18 provision of any laws to be guilty of perjury or otherwise giving a false statement by
19 reason of his or her failure to recite or acknowledge such arrest, or indictment,
20 information, or trial, or response to any inquiry made of the person for any purpose.

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

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

35 (g) The clerk of superior court in each county in North Carolina shall, as soon as
36 practicable after each term of court in the clerk's county, file with the Administrative
37 Office of the Courts the names of those persons granted a discharge under the
38 provisions of this section, and the Administrative Office of the Courts shall maintain a
39 confidential file containing the names of persons granted conditional discharges. The
40 information contained in the file shall be disclosed only to judges of the General Court
41 of Justice of North Carolina for the purpose of ascertaining whether any person charged
42 with an offense has been previously granted a discharge.

43 (h) Any person eligible for expunction of a criminal record under this section
44 shall be notified about the provisions of this section by the probation officer assigned to

1 that person. If no probation officer is assigned, notification of the provisions of this
2 section shall be provided by the court at the time of the conviction of the felony which
3 is to be expunged under this section.

4 (i) A person who files a petition for expunction of a criminal record under this
5 section must pay the clerk of superior court a fee of one hundred dollars (\$100.00) at the
6 time the petition is filed. Fees collected under this subsection shall be deposited in the
7 General Fund. This subsection does not apply to petitions filed by an indigent."

8 **SECTION 2.** This act becomes effective December 1, 2005, and expires
9 December 1, 2012.