

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 726

Short Title: Clarify Expunctions. (Public)

Sponsors: Representatives Moore, Ross, Goodwin (Primary Sponsors); Bordsen, Faison, Fisher, Harrison, Insko, and Lucas.

Referred to: Judiciary II.

March 23, 2009

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON'S RECORD MAY BE EXPUNGED FOR A FIRST MISDEMEANOR OFFENSE COMMITTED WHEN THE PERSON WAS LESS THAN EIGHTEEN YEARS OLD EVEN THOUGH THE PERSON IS EIGHTEEN YEARS OLD OR OLDER AT THE TIME OF CONVICTION AND TO PROVIDE THAT A PRAYER FOR JUDGMENT CONTINUED MAY BE DISMISSED FROM A PERSON'S RECORD IN THE SAME MANNER AS A DISMISSAL OR FINDING OF NOT GUILTY.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of ~~conviction~~ commission of misdemeanor; expunction of certain other misdemeanors.

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years (i) committed a misdemeanor when the person was less than 18 years old and who has 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, pleads guilty to or is guilty of a misdemeanor other than a traffic violation, or (ii) not yet attained the age of 21 years committed a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1) and who has 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, pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), ~~he~~ the person may file a petition in the court where he or she was convicted for expunction of the misdemeanor from his or her criminal record. The petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the completion of any period of probation, whichever occurs later, and the petition shall contain, but not be limited to, the following:~~

- (1) An affidavit by the petitioner that ~~he~~ the petitioner has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question and has not been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which ~~he~~ the petitioner lives and that his or her character and reputation are good.



- 1 (3) A statement that the petition is a motion in the cause in the case wherein the
2 petitioner was convicted.
- 3 (4) Affidavits of the clerk of superior court, chief of police, where appropriate,
4 and sheriff of the county in which the petitioner was convicted and, if
5 different, the county of which the petitioner is a resident, showing that the
6 petitioner has not been convicted of a felony or misdemeanor other than a
7 traffic violation under the laws of this State at any time prior to the
8 conviction for the misdemeanor in question or during the two-year period
9 following that conviction.
- 10 (5) An affidavit by the petitioner that no restitution orders or civil judgments
11 representing amounts ordered for restitution entered against him or her are
12 outstanding.

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

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

19 (b) If the court, after hearing, finds that the petitioner had remained of good behavior
20 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
21 years from the date of conviction of the misdemeanor in question, the petitioner has no
22 outstanding restitution orders or civil judgments representing amounts ordered for restitution
23 entered against ~~him~~ him or her, and (i) petitioner was not 18 years old at the time of the
24 ~~conviction~~ commission of the misdemeanor in question, or (ii) petitioner was not 21 years old
25 at the time of the ~~conviction~~ commission of the offense of possession of alcohol pursuant to
26 G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law,
27 to the status he or she occupied before such arrest or indictment or information. No person as to
28 whom such order has been entered shall be held thereafter under any provision of any laws to
29 be guilty of perjury or otherwise giving a false statement by reason of his or her failure to recite
30 or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry
31 made of him or her for any purpose.

32 (c) The court shall also order that the said misdemeanor conviction, or a civil
33 revocation of a drivers license as the result of a criminal charge, be expunged from the records
34 of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles,
35 bearing record of the same to expunge their records of the conviction or a civil revocation of a
36 drivers license as the result of a criminal charge. This subsection does not apply to civil or
37 criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.
38 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
39 arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor
40 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is
41 also expunged. The civil revocation of a drivers license shall not be expunged prior to a final
42 disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff,
43 chief or head of such other arresting agency shall then transmit the copy of the order with a
44 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the
45 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

46 (d) The clerk of superior court in each county in North Carolina shall, as soon as
47 practicable after each term of court in ~~his~~ the clerk's county, file with the Administrative Office
48 of the Courts, the names of those persons granted a discharge under the provisions of this
49 section, and the Administrative Office of the Courts shall maintain a confidential file
50 containing the names of persons granted conditional discharges. The information contained in
51 such file shall be disclosed only to judges of the General Court of Justice of North Carolina for

1 the purpose of ascertaining whether any person charged with an offense has been previously
2 granted a discharge.

3 (e) A person who files a petition for expunction of a criminal record under this section
4 must pay the clerk of superior court a fee of one hundred twenty-five dollars (\$125.00) at the
5 time the petition is filed. Fees collected under this subsection shall be deposited in the General
6 Fund. This subsection does not apply to petitions filed by an indigent."

7 **SECTION 2.** G.S. 15A-146 reads as rewritten:

8 "**§ 15A-146. Expunction of records when charges are ~~dismissed~~dismissed, a prayer for**
9 **judgment continued, or there are findings of not guilty.**

10 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
11 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
12 dismissed, a prayer for judgment is continued, or a finding of not guilty or not responsible is
13 entered, that person may apply to the court of the county where the charge was brought for an
14 order to expunge from all official records any entries relating to his apprehension or trial. The
15 court shall hold a hearing on the application and, upon finding that the person had not
16 previously received an expungement under this section, G.S. 15A-145, or G.S. 90-96, and that
17 the person had not previously been convicted of any felony under the laws of the United States,
18 this State, or any other state, the court shall order the expunction. No person as to whom such
19 an order has been entered shall be held thereafter under any provision of any law to be guilty of
20 perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made
21 for any purpose, by reason of his failure to recite or acknowledge any expunged entries
22 concerning apprehension or trial.

23 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
24 offenses and all the charges are dismissed, prayers for judgment are continued, or findings of
25 not guilty or not responsible are made, then a person may apply to have each of those charges
26 expunged if the offenses occurred within the same 12-month period of time or if the charges are
27 ~~dismissed~~dismissed, prayers for judgment are continued, or findings are made at the same term
28 of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean
29 one week for superior court and one day for district court. There is no requirement that the
30 multiple offenses arise out of the same transaction or occurrence or that the multiple offenses
31 were consolidated for judgment. The court shall hold a hearing on the application. If the court
32 finds that the person had not previously received an expungement under this subsection, that
33 the person had not previously received an expungement under G.S. 15A-145 or G.S. 90-96, and
34 that the person had not previously been convicted of any felony under the laws of the United
35 States, this State, or any other state, the court shall order the expunction. No person as to whom
36 such an order has been entered shall be held thereafter under any provision of any law to be
37 guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry
38 made for any purpose, by reason of his failure to recite or acknowledge any expunged entries
39 concerning apprehension or trial.

40 (b) The court may also order that the said entries, including civil revocations of drivers
41 licenses as a result of the underlying charge, shall be expunged from the records of the court,
42 and direct all law-enforcement agencies, including the Division of Motor Vehicles, bearing
43 record of the same to expunge their records of the entries, including civil revocations of drivers
44 licenses as a result of the underlying charge being expunged. This subsection does not apply to
45 civil or criminal charges based upon the civil revocation, or to civil revocations under
46 G.S. 20-16.2. The clerk shall forward a certified copy of the order to the sheriff, chief of police,
47 or other arresting agency. The clerk shall forward a certified copy of the order to the Division
48 of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal
49 charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to
50 a final disposition of any pending civil or criminal charge based upon the civil revocation. The
51 sheriff, chief or head of such other arresting agency shall then transmit the copy of the order

1 with the form supplied by the State Bureau of Investigation to the State Bureau of
2 Investigation, and the State Bureau of Investigation shall forward the order to the Federal
3 Bureau of Investigation. The costs of expunging these records shall not be taxed against the
4 petitioner.

5 (b1) Any person entitled to expungement under this section may also apply to the court
6 for an order expunging DNA records when the person's case has been dismissed by the trial
7 court and the person's DNA record or profile has been included in the State DNA Database and
8 the person's DNA sample is stored in the State DNA Databank. A copy of the application for
9 expungement of the DNA record or DNA sample shall be served on the district attorney for the
10 judicial district in which the felony charges were brought not less than 20 days prior to the date
11 of the hearing on the application. If the application for expungement is granted, a certified copy
12 of the trial court's order dismissing the charges shall be attached to an order of expungement.
13 The order of expungement shall include the name and address of the defendant and the
14 defendant's attorney and shall direct the SBI to send a letter documenting expungement as
15 required by subsection (b2) of this section.

16 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this
17 section, the SBI shall purge the DNA record and all other identifying information from the
18 State DNA Database and the DNA sample stored in the State DNA Databank covered by the
19 order, except that the order shall not apply to other offenses committed by the individual that
20 qualify for inclusion in the State DNA Database and the State DNA Databank. A letter
21 documenting expungement of the DNA record and destruction of the DNA sample shall be sent
22 by the SBI to the defendant and the defendant's attorney at the address specified by the court in
23 the order of expungement.

24 (c) The Clerk of Superior Court in each county in North Carolina shall, as soon as
25 practicable after each term of court in his county, file with the Administrative Office of the
26 Courts, the names of those persons granted an expungement under the provisions of this section
27 and the Administrative Office of the Courts shall maintain a confidential file containing the
28 names of persons granted such expungement. The information contained in such files shall be
29 disclosed only to judges of the General Court of Justice of North Carolina for the purpose of
30 ascertaining whether any person charged with an offense has been previously granted an
31 expungement."

32 **SECTION 3.** This act becomes effective December 1, 2009, and applies to
33 petitions for expunctions filed on or after that date.