

Expunction/Nonviolent Offenses

This Act creates a petition process to allow expunction of nonviolent felonies or nonviolent misdemeanors, regardless of the offender's age at the time of conviction, if after 15 years the person has had no other convictions for felonies or misdemeanors, other than traffic violations. The 15-year period is calculated from the conviction date or the completion of any sentence, period of post-release supervision, or period of probation. Multiple convictions occurring in the same session of court, where none of the offenses are alleged to have occurred after service of process for another offense, may all be expunged.

The petition process includes payment of a \$175 fee, notice to the district attorney who has a right to file an objection to the petition, and judicial authority to call upon a probation officer for investigation or verification of petitioner's conduct. Before granting the petition to expunge, the court must find:

- The petitioner has not had a previous conviction expunged under any of the expunction provisions. Expunction of a dismissed charge or not guilty finding will not prevent expunction under this Act.
- The petitioner has remained of good moral character and has no outstanding or pending criminal cases.
- The petitioner has no other felony or misdemeanor convictions, other than a traffic violation.
- The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution.

Submitted as:

North Carolina

[SESSION LAW 2012-191](#)

Status: Enacted into law in 2012.

Suggested State Legislation

(Title, enacting clause, etc.)

1 Section 1. [*Short Title.*] An Act to allow for expunction of nonviolent felonies or nonviolent
2 misdemeanors.

3
4 Section 2. [*Expunction of certain misdemeanors and felonies; no age limitation.*]

5 (a) For purposes of this section, the term “nonviolent misdemeanor” or “nonviolent felony”
6 means any misdemeanor or felony except the following:

7 (1) A Class A through G felony or a Class A1 misdemeanor.

8 (2) An offense that includes assault as an essential element of the offense.

9 (3) An offense requiring registration pursuant to [insert citation], whether or not the
10 person is currently required to register.

11 (4) Any of the following sex-related or stalking offenses: [insert citation].

12 (5) Any felony offense in [insert citation] where the offense involves
13 methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.

14 (6) Any felony offense in which a commercial motor vehicle was used in the
15 commission of the offense.

1 (b) Notwithstanding any other provision of law, if the person is convicted of more than one
2 nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
3 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had
4 already been served with criminal process for the commission of a nonviolent felony or nonviolent
5 misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be
6 treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the
7 expunction order issued under this section shall provide that the multiple nonviolent felony
8 convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in
9 accordance with this section.

10 (c) A person may file a petition, in the court where the person was convicted, for expunction
11 of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the
12 person has no other misdemeanor or felony convictions, other than a traffic violation, and was
13 convicted of a nonviolent misdemeanor or nonviolent felony that is eligible pursuant to subsection
14 (b) of this section. The petition shall not be filed earlier than 15 years after the date of the conviction
15 or when any active sentence, period of probation, and post-release supervision has been served,
16 whichever occurs later. The petition shall contain, but not be limited to, the following:

17 (1) An affidavit by the petitioner that the petitioner has been of good moral character
18 since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been
19 convicted of any other felony or misdemeanor, other than a traffic violation, under the laws of the
20 United States or the laws of this State or any other state.

21 (2) Verified affidavits of two persons who are not related to the petitioner or to each
22 other by blood or marriage, that they know the character and reputation of the petitioner in the
23 community in which the petitioner lives and that the petitioner's character and reputation are good.

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

26 (4) An application on a form approved by the Administrative Office of the Courts
27 requesting and authorizing a name-based State and national criminal history record check by the
28 Department of Justice using any information required by the Administrative Office of the Courts to
29 identify the individual, a search by the Department of Justice for any outstanding warrants on
30 pending criminal cases, and a search of the confidential record of expunctions maintained by the
31 Administrative Office of the Courts. The application shall be forwarded to the Department of Justice
32 and to the Administrative Office of the Courts, which shall conduct the searches and report their
33 findings to the court.

34 (5) An affidavit by the petitioner that no restitution orders or civil judgments
35 representing amounts ordered for restitution entered against the petitioner are outstanding.

36 Upon filing of the petition, the petition shall be served upon the district attorney of the court
37 wherein the case was tried resulting in conviction. The district attorney shall have 30 days thereafter
38 in which to file any objection thereto and shall be duly notified as to the date of the hearing of the
39 petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to
40 file objection to the petition. The district attorney shall make his or her best efforts to contact the
41 victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

42 The presiding judge is authorized to call upon a probation officer for any additional
43 investigation or verification of the petitioner's conduct since the conviction. The court shall review
44 any other information the court deems relevant, including, but not limited to, affidavits or other
45 testimony provided by law enforcement officers, district attorneys, and victims of crimes committed
46 by the petitioner.

47 If the court, after hearing, finds that the petitioner has not previously been granted an
48 expunction under this section, [insert citation]; the petitioner has remained of good moral character;
49 the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other

1 felony or misdemeanor convictions other than a traffic violation; the petitioner has no outstanding
2 restitution orders or civil judgments representing amounts ordered for restitution entered against the
3 petitioner; and the petitioner was convicted of an offense eligible for expunction under this section
4 and was convicted of, and completed any sentence received for, the nonviolent misdemeanor or
5 nonviolent felony at least 15 years prior to the filing of the petition, it may order that such person be
6 restored, in the contemplation of the law, to the status the person occupied before such arrest or
7 indictment or information. If the court denies the petition, the order shall include a finding as to the
8 reason for the denial.

9 (d) No person as to whom an order has been entered pursuant to subsection (c) of this section
10 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a
11 false statement by reason of that person's failure to recite or acknowledge the arrest, indictment,
12 information, trial, or conviction. Persons pursuing certification under the provisions of [insert
13 citation], however, shall disclose any and all convictions to the certifying Commission, regardless of
14 whether or not the convictions were expunged pursuant to the provisions of this section.

15 Persons required by State law to obtain a criminal history record check on a prospective
16 employee shall not be deemed to have knowledge of any convictions expunged under this section.

17 (e) The court shall also order that the conviction be expunged from the records of the court
18 and direct all law enforcement agencies bearing record of the same to expunge their records of the
19 conviction. The clerk shall notify State and local agencies of the court's order, as provided in [insert
20 citation].

21 (f) Any other applicable State or local government agency shall expunge from its records
22 entries made as a result of the conviction ordered expunged under this section upon receipt from the
23 petitioner of an order entered pursuant to this section. The agency shall also reverse any
24 administrative actions taken against a person whose record is expunged under this section as a result
25 of the charges or convictions expunged. This subsection shall not apply to the Department of Justice
26 for DNA records and samples stored in the State DNA Database and the State DNA Databank or to
27 fingerprint records.

28 (g) A person who files a petition for expunction of a criminal record under this section must
29 pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the
30 petition is filed. Fees collected under this subsection shall be deposited in the General Fund. This
31 subsection does not apply to petitions filed by an indigent.

32
33 Section 3. *[Expunction of records for first offenders who are under 18 years of age at the*
34 *time of the commission of a nonviolent felony.]*

35 (a) For purposes of this section, the term “nonviolent felony” means any felony except the
36 following:

37 (1) A Class A through G felony.

38 (2) A felony that includes assault as an essential element of the offense.

39 (3) A felony that is an offense for which the convicted offender must register under
40 requiring registration pursuant to [insert citation], whether or not the person is currently required to
41 register.

42 (4) A felony that is an offense that did not require registration under [insert citation]
43 at the time of the commission of the offense but does require registration on the date the petition to
44 expunge the offense would be filed.

45 (5) Any felony offense under the following sex-related or stalking offenses [insert
46 citation].

47 (6) Any felony offense charged pursuant to [insert citation] where the offense involves
48 methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine;
49 except that if a prayer for judgment continued has been entered for an offense classified as either a

1 Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the
2 procedures in this section.

3 (7) Any felony offense in which a commercial motor vehicle was used in the
4 commission of the offense.

5 (b) Notwithstanding any other provision of law, if the person is convicted of more than one
6 nonviolent felony in the same session of court and none of the nonviolent felonies are alleged to
7 have occurred after the person had already been charged and arrested with criminal process for the
8 commission of a nonviolent felony, then the multiple nonviolent felony convictions shall be treated
9 as one nonviolent felony conviction under this section, and the expunction order issued under this
10 section shall provide that the multiple nonviolent felony convictions shall be expunged from the
11 person's record in accordance with this section.

12 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
13 commission of the offense and has not previously been convicted of any felony or misdemeanor
14 other than a traffic violation under the laws of the United States or the laws of this State or any other
15 state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court
16 where the person was convicted for expunction of the nonviolent felony from the person's criminal
17 record. The petition shall not be filed earlier than four years after the date of the conviction or when
18 any active sentence, period of probation, and post-release supervision has been served, whichever
19 occurs later. The person shall also perform at least 100 hours of community service, preferably
20 related to the conviction, before filing a petition for expunction under this section. The petition shall
21 contain the following:

22 (1) An affidavit by the petitioner that the petitioner has been of good moral character
23 since the date of conviction of the nonviolent felony in question and has not been convicted of any
24 other felony or any misdemeanor other than a traffic violation under the laws of the United States or
25 the laws of this State or any other state.

26 (2) Verified affidavits of two persons who are not related to the petitioner or to each
27 other by blood or marriage, that they know the character and reputation of the petitioner in the
28 community in which the petitioner lives and that the petitioner's character and reputation are good.

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

31 (4) An application on a form approved by the Administrative Office of the Courts
32 requesting and authorizing (i) a State and national criminal history record check by the Department
33 of Justice using any information required by the Administrative Office of the Courts to identify the
34 individual; (ii) a search by the Department of Justice for any outstanding warrants or pending
35 criminal cases; and (iii) a search of the confidential record of expunctions maintained by the
36 Administrative Office of the Courts. The application shall be forwarded to the Department of Justice
37 and to the Administrative Office of the Courts, which shall conduct the searches and report their
38 findings to the court.

39 (5) An affidavit by the petitioner that no restitution orders or civil judgments
40 representing amounts ordered for restitution entered against the petitioner are outstanding.

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

45 (7) An affidavit by the petitioner that the petitioner possesses a high school diploma,
46 a high school graduation equivalency certificate, or a General Education Development degree.

47 The petition shall be served upon the district attorney of the court wherein the case was tried
48 resulting in conviction. The district attorney shall have 30 days thereafter in which to file any
49 objection thereto and shall be duly notified as to the date of the hearing of the petition. The district

1 attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the
2 request for expunction prior to the date of the hearing.

3 (d) The court in which the petition was filed shall take the following steps and shall consider
4 the following issues in rendering a decision upon a petition for expunction of records of a nonviolent
5 felony under this section:

6 (1) Call upon a probation officer for additional investigation or verification of the
7 petitioner's conduct during the four-year period since the date of conviction of the nonviolent felony
8 in question.

9 (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile
10 records remain separate from adult records and files and are withheld from public inspection as
11 provided under [insert citation].

12 (3) Review the amount of restitution made by the petitioner to the victim of the
13 nonviolent felony to be expunged and give consideration to whether or not restitution was paid in
14 full.

15 (4) Review any other information the court deems relevant, including, but not limited
16 to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims
17 of nonviolent felonies committed by the petitioner.

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

21 (1) The petitioner has remained of good moral character and has been free of
22 conviction of any felony or misdemeanor, other than a traffic violation, for four years from the date
23 of conviction of the nonviolent felony in question or any active sentence, period of probation, or
24 post-release supervision has been served, whichever is later.

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

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

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

31 (5) The petitioner was less than 18 years old at the time of the commission of the
32 offense in question.

33 (6) The petitioner has performed at least 100 hours of community service since the
34 time of the conviction and possesses a high school diploma, a high school graduation equivalency
35 certificate, or a General Education Development degree.

36 (7) The search of the confidential records of expunctions conducted by the
37 Administrative Office of the Courts shows that the petitioner has not been previously granted an
38 expunction.

39 (f) No person as to whom an order has been entered pursuant to subsection (e) of this section
40 shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a
41 false statement by reason of that person's failure to recite or acknowledge the arrest, indictment,
42 information, trial, or conviction. Persons pursuing certification under the provisions of [insert
43 citation], however, shall disclose any and all felony convictions to the certifying Commission
44 regardless of whether or not the felony convictions were expunged pursuant to the provisions of this
45 section.

46 Persons required by State law to obtain a criminal history record check on a prospective
47 employee shall not be deemed to have knowledge of any convictions expunged under this section.

48 (g) The court shall also order that the nonviolent felony conviction be expunged from the
49 records of the court and direct all law enforcement agencies bearing record of the same to expunge

1 their records of the conviction. The clerk shall notify State and local agencies of the court's order as
2 provided in [insert citation].

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

9 (i) Any person eligible for expunction of a criminal record under this section shall be notified
10 about the provisions of this section by the probation officer assigned to that person. If no probation
11 officer is assigned, notification of the provisions of this section shall be provided by the court at the
12 time of the conviction of the felony which is to be expunged under this section.”
13

14 Section 4. [*Expunction of records when charges are dismissed or there are findings of not*
15 *guilty.*]

16 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged
17 with an infraction under [insert citation] prior to [insert date] and the charge is dismissed, or a
18 finding of not guilty or not responsible is entered, that person may apply to the court of the county
19 where the charge was brought for an order to expunge from all official records any entries relating to
20 his apprehension or trial. The court shall hold a hearing on the application and, upon finding that the
21 person had not previously received an expungement under this section, [insert citation], and that the
22 person had not previously been convicted of any felony under the laws of the United States, this
23 State, or any other state, the court shall order the expunction. No person as to whom such an order
24 has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to
25 be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by
26 reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

27 (a1) Notwithstanding subsection (a) of this section, if a person is charged with
28 multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are
29 made, then a person may apply to have each of those charges expunged if the offenses occurred
30 within the same 12-month period of time or if the charges are dismissed or findings are made at the
31 same term of court. Unless circumstances otherwise clearly provide, the phrase “term of court” shall
32 mean one week for superior court and one day for district court. There is no requirement that the
33 multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were
34 consolidated for judgment. The court shall hold a hearing on the application. If the court finds (i)
35 that the person had not previously received an expungement under this subsection, or that any
36 previous expungement received under this subsection occurred prior to [insert date] and was for an
37 offense that occurred within the same 12-month period of time, or was dismissed or findings made at
38 the same term of court, as the offenses that are the subject of the current application, (ii) that the
39 person had not previously received an expungement under [insert citation] and (iii) that the person
40 had not previously been convicted of any felony under the laws of the United States, this State, or
41 any other state, the court shall order the expunction. No person as to whom such an order has been
42 entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty
43 of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of
44 his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

45 (b) The court may also order that the said entries, including civil revocations of drivers
46 licenses as a result of the underlying charge, shall be expunged from the records of the court, and
47 direct all law-enforcement agencies, the Division of Adult Correction of the Department of Public
48 Safety, the Division of Motor Vehicles, and any other State or local government agencies identified
49 by the petitioner as bearing record of the same to expunge their records of the entries, including civil

1 revocations of drivers licenses as a result of the underlying charge being expunged. This subsection
2 does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations
3 under [insert citation]. The clerk shall notify State and local agencies of the court's order as provided
4 in [insert citation]. The clerk shall forward a certified copy of the order to the Division of Motor
5 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also
6 expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition
7 of any pending civil or criminal charge based upon the civil revocation. The costs of expunging the
8 records, as required under [insert citation], shall not be taxed against the petitioner.

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

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

27 (c) The clerk shall notify State and local agencies of the court's order as provided in [insert
28 citation].

29
30 Section 5. [*Confidential agency files; exceptions to expunction.*]

31 (a) The Administrative Office of the Courts shall maintain a confidential file containing the
32 names of those people for whom it received a notice under [insert citation]. The information
33 contained in the file may be disclosed only as follows:

34 (1) To a judge of the General Court of Justice of [insert state] for the purpose of
35 ascertaining whether a person charged with an offense has been previously granted a discharge or an
36 expunction.

37 (2) To a person requesting confirmation of the person's own discharge or expunction,
38 as provided in [insert citation].

39 (3) To the General Court of Justice of [insert state] in response to a subpoena or other
40 court order issued pursuant to a civil action under [insert citation].

41 (4) If the criminal record was expunged pursuant to [insert citation], to State and local
42 law enforcement agencies for employment purposes only.

43 (5) If the criminal record was expunged pursuant to [insert citation], to the [insert
44 state] Criminal Justice Education and Training Standards Commission for certification purposes
45 only.

46 (6) If the criminal record was expunged pursuant to [insert citation], to the [insert
47 state] Sheriffs' Education and Training Standards Commission for certification purposes only.”

48 (b) Notwithstanding [insert citation], the Commission may gain access to a person's felony
49 conviction records, including those maintained by the Administrative Office of the Courts in its

1 confidential files containing the names of persons granted expunctions. The Commission may deny,
2 suspend, or revoke a person's certification based solely on that person's felony conviction, whether
3 or not that conviction was expunged.

4 (c) Notwithstanding [insert citation] the Commission may gain access to a person's felony
5 conviction records, including those maintained by the Administrative Office of the Courts in its
6 confidential files containing the names of persons granted expunctions. The Commission may deny,
7 suspend, or revoke a person's certification based solely on that person's felony conviction, whether
8 or not that conviction was expunged.

9

10 Section 6. [*Severability.*] Insert severability clause.

11

12 Section 7. [*Repealer.*] Insert repealer clause.

13

14 Section 8. [*Effective Date.*] Insert effective date.

15