

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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HOUSE BILL 898*
Committee Substitute Favorable 6/27/07
Committee Substitute #2 Favorable 7/19/07

Short Title: Expunge Nonviolent Felony/Youthful Offender. (Public)

Sponsors:

Referred to:

March 20, 2007

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD
MAY BE EXPUNGED OF NONVIOLENT FELONIES BUT TO ALLOW THE
CRIMINAL JUSTICE EDUCATION AND TRAINING STANDARDS
COMMISSION AND THE SHERIFFS' EDUCATION AND TRAINING
STANDARDS COMMISSION ACCESS TO THE RECORDS OF EXPUNCTION.

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 first offenders who are under 18 years of
age at the time of the commission of a nonviolent felony.**

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

(1) A Class A through G felony;

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

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

(4) Any felony offense charged pursuant to Chapter 90 of the General
Statutes where the offense involves methamphetamines; and

(5) A felony offense charged pursuant to G.S. 14-12.12(b), 14-12.13, or
14-12.14, or any offense charged as a felony pursuant to G.S. 14-3(c).

(b) Notwithstanding any other provision of law, if the person is convicted of
more than one nonviolent felony in the same session of court and none of the nonviolent
felonies are alleged to have occurred after the person had already been charged and
arrested for the commission of a nonviolent felony, then the multiple nonviolent felony
convictions shall be treated as one nonviolent felony conviction under this section, and
the expunction order issued under this section shall provide that the multiple nonviolent

1 felony convictions shall be expunged from the person's record in accordance with this
2 section.

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

- 14 (1) An affidavit by the petitioner that the petitioner has been of good
15 moral character for the two-year period since the date of conviction of
16 the nonviolent felony in question and has not been convicted of any
17 other felony or any misdemeanor other than a traffic violation under
18 the laws of the United States or the laws of this State or any other
19 state.
- 20 (2) Verified affidavits of two persons who are not related to the petitioner
21 or to each other by blood or marriage that they know the character and
22 reputation of the petitioner in the community in which the petitioner
23 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
25 wherein the petitioner was convicted.
- 26 (4) An application on a form approved by the Administrative Office of the
27 Courts requesting and authorizing (i) a State and national criminal
28 record check by the Department of Justice using any information
29 required by the Administrative Office of the Courts to identify the
30 individual; (ii) a search by the Department of Justice for any
31 outstanding warrants or pending criminal cases; and (iii) a search of
32 the confidential record of expunctions maintained by the
33 Administrative Office of the Courts. The application shall be
34 forwarded to the Department of Justice and to the Administrative
35 Office of the Courts, which shall conduct the searches and report their
36 findings to the court.
- 37 (5) An affidavit by the petitioner that no restitution orders or civil
38 judgments representing amounts ordered for restitution entered against
39 the petitioner are outstanding.
- 40 (6) An affidavit by the petitioner that the petitioner has performed at least
41 100 hours of community service since the conviction for the
42 nonviolent felony. The affidavit shall include a list of the community
43 services performed, a list of the recipients of the services, and a
44 detailed description of those services.

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

4 The petition shall be served upon the district attorney of the court wherein the case
5 was tried resulting in conviction. The district attorney shall have 30 days thereafter in
6 which to file any objection thereto and shall be duly notified as to the date of the
7 hearing of the petition. The district attorney shall make his or her best efforts to contact
8 the victim, if any, to notify the victim of the request for expunction prior to the date of
9 the hearing.

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

13 (1) Call upon a probation officer for additional investigation or
14 verification of the petitioner's conduct during the two-year period since
15 the date of conviction of the nonviolent felony in question.

16 (2) Review the petitioner's juvenile record, ensuring that the petitioner's
17 juvenile records remain separate from adult records and files and are
18 withheld from public inspection as provided under Article 30 of
19 Chapter 7B of the General Statutes.

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

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

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

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

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

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

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

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

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

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

8 (f) No person as to whom an order has been entered pursuant to subsection (e) of
9 this section shall be held thereafter under any provision of any laws to be guilty of
10 perjury or otherwise giving a false statement by reason of that person's failure to recite
11 or acknowledge the arrest, indictment, information, trial, or conviction. Persons
12 pursuing certification under the provisions of Chapter 17C or 17E of the General
13 Statutes, however, shall disclose any and all felony convictions to the certifying
14 Commission regardless of whether or not the felony convictions were expunged
15 pursuant to the provisions of this section.

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

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

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

33 (i) The clerk of superior court in each county in North Carolina shall, as soon as
34 practicable after each term of court in the clerk's county, file with the Administrative
35 Office of the Courts the names of those persons granted expunctions under the
36 provisions of this section, and the Administrative Office of the Courts shall maintain a
37 confidential file containing the names of persons granted expunctions. The information
38 contained in the file shall be disclosed only as follows:

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

42 (2) To State and local law enforcement agencies for employment purposes
43 only.

1 (3) To the North Carolina Criminal Justice Education and Training
2 Standards Commission for certification purposes only.

3 (4) To the North Carolina Sheriffs' Education and Training Standards
4 Commission for certification purposes only.

5 (j) Any person eligible for expunction of a criminal record under this section
6 shall be notified about the provisions of this section by the probation officer assigned to
7 that person. If no probation officer is assigned, notification of the provisions of this
8 section shall be provided by the court at the time of the conviction of the felony which
9 is to be expunged under this section.

10 (k) A person who files a petition for expunction of a criminal record under this
11 section shall pay the clerk of superior court a fee of one hundred twenty-five dollars
12 (\$125.00) at the time the petition is filed. Fees collected under this subsection shall be
13 deposited in the General Fund. This subsection does not apply to petitions filed by an
14 indigent."

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

16 "**§ 17C-13. ~~Pardons.~~Pardons; expunctions.**

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

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

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

29 "**§ 17E-12. ~~Pardons.~~Pardons; expunctions.**

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

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

41 **SECTION 4.** This act becomes effective December 1, 2007, and expires
42 December 1, 2014.