

GENERAL ASSEMBLY OF NORTH CAROLINA  
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HOUSE BILL 898\*  
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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, heroin, or  
possession with intent to sell or deliver or sell and deliver cocaine; 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).

(6) A felony offense charged pursuant to G.S. 14-401.16 or G.S. 14-277.3.

(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

1 convictions shall be treated as one nonviolent felony conviction under this section, and  
2 the expunction order issued under this section shall provide that the multiple nonviolent  
3 felony convictions shall be expunged from the person's record in accordance with this  
4 section.

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

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

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

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

28 (4) An application on a form approved by the Administrative Office of the  
29 Courts requesting and authorizing (i) a State and national criminal  
30 record check by the Department of Justice using any information  
31 required by the Administrative Office of the Courts to identify the  
32 individual; (ii) a search by the Department of Justice for any  
33 outstanding warrants or pending criminal cases; and (iii) a search of  
34 the confidential record of expunctions maintained by the  
35 Administrative Office of the Courts. The application shall be  
36 forwarded to the Department of Justice and to the Administrative  
37 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  
40 judgments representing amounts ordered for restitution entered against  
41 the petitioner are outstanding.

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

1 services performed, a list of the recipients of the services, and a  
2 detailed description of those services.

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

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

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

- 15 (1) Call upon a probation officer for additional investigation or  
16 verification of the petitioner's conduct during the four-year period  
17 since the date of conviction of the nonviolent felony in question.  
18 (2) Review the petitioner's juvenile record, ensuring that the petitioner's  
19 juvenile records remain separate from adult records and files and are  
20 withheld from public inspection as provided under Article 30 of  
21 Chapter 7B of the General Statutes.  
22 (3) Review the amount of restitution made by the petitioner to the victim  
23 of the nonviolent felony to be expunged and give consideration to  
24 whether or not restitution was paid in full.  
25 (4) Review any other information the court deems relevant, including, but  
26 not limited to, affidavits or other testimony provided by law  
27 enforcement officers, district attorneys, and victims of nonviolent  
28 felonies committed by the petitioner.

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

- 32 (1) The petitioner has remained of good moral character and has been free  
33 of conviction of any felony or misdemeanor, other than a traffic  
34 violation, for four years from the date of conviction of the nonviolent  
35 felony in question or any active sentence, period of probation, or  
36 post-release supervision has been served, whichever is later.  
37 (2) The petitioner has not previously been convicted of any felony or  
38 misdemeanor other than a traffic violation under the laws of the United  
39 States, the laws of this State, or any other state.  
40 (3) The petitioner has no outstanding warrants or pending criminal cases.  
41 (4) The petitioner has no outstanding restitution orders or civil judgments  
42 representing amounts ordered for restitution entered against the  
43 petitioner.

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

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

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

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

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

21       (g)    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 of police, or head of any other arresting agency shall then transmit the copy of the  
26       order 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       (h)    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       (i)    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 expunctions 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 expunctions. The information  
40       contained in the file shall be disclosed only as follows:

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

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

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

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

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

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

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

18           "**§ 17C-13. ~~Pardons.~~Pardons; expunctions.**

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

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

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

31           "**§ 17E-12. ~~Pardons.~~Pardons; expunctions.**

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

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

43           **SECTION 4.** This act becomes effective December 1, 2007, and expires  
44 December 1, 2014.