

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2007

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SENATE BILL 677*
Judiciary II (Criminal) Committee Substitute Adopted 4/25/07

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

Sponsors:

Referred to:

March 13, 2007

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-150. 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 (3) A felony that is an offense for which the convicted offender must
14 register under Article 27A of Chapter 14 of the General Statutes; and

15 (4) Any felony offense charged pursuant to Chapter 90 of the General
16 Statutes where the offense involves methamphetamines.

17 (b) Notwithstanding any other provision of law, if the person is convicted of
18 more than one nonviolent felony in the same session of court and none of the nonviolent
19 felonies are alleged to have occurred after the person had already been charged and
20 arrested for the commission of a nonviolent felony, then the multiple nonviolent felony
21 convictions shall be treated as one nonviolent felony conviction under this section, and
22 the expunction order issued under this section shall provide that the multiple nonviolent
23 felony convictions shall be expunged from the person's record in accordance with this
24 section.

25 (c) Whenever any person who had not yet attained the age of 18 years at the time
26 of the offense and has not previously been convicted of any felony or misdemeanor
27 other than a traffic violation under the laws of the United States, the laws of this State,
28 or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file
29 a petition in the court where the person was convicted for expunction of the nonviolent

1 felony from the person's criminal record. The petition shall not be filed earlier than two
2 years after the date of the conviction or when any active sentence, period of probation,
3 and post-release supervision has been served, whichever occurs later. The person shall
4 also perform at least 100 hours of community service, preferably related to the
5 conviction, before filing a petition for expunction under this section. The petition shall
6 contain the following:

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

41 The petition shall be served upon the district attorney of the court wherein the case
42 was tried resulting in conviction. The district attorney shall have 30 days thereafter in
43 which to file any objection thereto and shall be duly notified as to the date of the
44 hearing of the petition. The district attorney shall make his or her best efforts to contact

1 the victim, if any, to notify the victim of the request for expunction prior to the date of
2 the hearing.

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

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

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

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

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

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

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

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

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

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

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

37 (6) The petitioner has performed at least 100 hours of community service
38 since the time of the conviction and possesses a high school diploma,
39 a high school graduation equivalency certificate, or a General
40 Education Development Degree.

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

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

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

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

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

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

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

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

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

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

41 (j) Any person eligible for expunction of a criminal record under this section
42 shall be notified about the provisions of this section by the probation officer assigned to
43 that person. If no probation officer is assigned, notification of the provisions of this

1 section shall be provided by the court at the time of the conviction of the felony which
2 is to be expunged under this section.

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

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

9 "**§ 17C-13. Pardons; Pardons; expunctions.**

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

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

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

22 "**§ 17E-12. Pardons; Pardons; expunctions.**

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

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

34 **SECTION 4.** This act becomes effective December 1, 2007, and expires
35 December 1, 2014.