

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 788*

Short Title: Expunge Nonviolent Felonies/Young Offenders. (Public)

Sponsors: Senators Kinnaird; Atwater, Graham, McKissick, Nesbitt, Snow, Vaughan, and Weinstein.

Referred to: Judiciary I.

March 25, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A YOUTHFUL OFFENDER'S CRIMINAL RECORD MAY
3 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 by
6 adding a new section to read:

7 **"§ 15A-150. Expunction of records for first offenders who are under 18 years of age at**
8 **the time of the commission of a nonviolent felony.**

9 (a) For purposes of this section, the term "nonviolent felony" means any felony except
10 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 register
14 under Article 27A of Chapter 14 of the General Statutes; and

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

17 (b) Notwithstanding any other provision of law, if a person is convicted of more than
18 one nonviolent felony in the same session of court, then the multiple nonviolent felony
19 convictions shall be treated as one nonviolent felony conviction under this section, and the
20 expunction order issued under this section shall provide that the multiple convictions shall be
21 expunged from the person's record in accordance with this section.

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

32 (1) An affidavit by the petitioner that he or she has been of good behavior for
33 the two-year period since the date of conviction of the nonviolent felony in
34 question and has not been convicted of any felony or misdemeanor other
35 than a traffic violation under the laws of the United States or the laws of this
36 State or any other state.



- 1 (2) Verified affidavits of two persons who are not related to the petitioner or to
2 each other by blood or marriage that they know the character and reputation
3 of the petitioner in the community in which he or she lives and that the
4 petitioner's character and reputation are good.
- 5 (3) A statement that the petition is a motion in the cause in the case wherein the
6 petitioner was convicted.
- 7 (4) An application on a form approved by the Administrative Office of the
8 Courts requesting and authorizing a State and national criminal record check
9 by the Department of Justice using any information required by the
10 Administrative Office of the Courts to identify the individual and a search of
11 the confidential records of expunctions maintained by the Administrative
12 Office of the Courts. The application shall be forwarded to the Department
13 of Justice and to the Administrative Office of the Courts to conduct the
14 searches and report the findings to the court.
- 15 (5) An affidavit by the petitioner that no restitution orders or civil judgments
16 representing amounts ordered for restitution entered against him or her are
17 outstanding.
- 18 (6) An affidavit by the petitioner that the petitioner has performed at least 100
19 hours of community service since the conviction for the nonviolent felony.
20 The affidavit shall include a list of the community services performed, a list
21 of the recipients of the services, and a detailed description of those services.
- 22 (7) An affidavit by the petitioner that the petitioner possesses a high school
23 diploma or a high school graduation equivalency certificate or that the
24 petitioner is attending a basic skills program in pursuit of a General
25 Education Development degree or adult high school diploma.

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

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

34 (d) The court shall order that the person be restored, in the contemplation of the law, to
35 the status the person occupied before such arrest or indictment or information if the court finds
36 all of the following after a hearing:

- 37 (1) The petitioner has remained of good behavior and has been free of
38 conviction of any felony or misdemeanor, other than a traffic violation, for
39 two years from the date of conviction of the nonviolent felony in question or
40 any active sentence, period of probation, or post-release supervision has
41 been served, whichever is later.
- 42 (2) The petitioner has not previously been convicted of any felony or
43 misdemeanor other than a traffic violation under the laws of the United
44 States, the laws of this State, or any other state.
- 45 (3) The petitioner has no outstanding restitution orders or civil judgments
46 representing amounts ordered for restitution entered against him or her.
- 47 (4) The petitioner was less than 18 years old at the time of the commission of
48 the offense in question.
- 49 (5) The petitioner has performed at least 100 hours of community service since
50 the time of the conviction and possesses a high school diploma or high

1 school graduation equivalency certificate or is attending a program in pursuit
2 of a General Education Development degree or adult high school diploma.

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

6 No person as to whom such order has been entered shall be held thereafter under any
7 provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of
8 his or her failure to recite or acknowledge such arrest, indictment, information, trial, or
9 conviction.

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

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

23 (g) The clerk of superior court in each county in North Carolina shall, as soon as
24 practicable after each term of court in the clerk's county, file with the Administrative Office of
25 the Courts the names of those persons granted a discharge under the provisions of this section,
26 and the Administrative Office of the Courts shall maintain a confidential file containing the
27 names of persons granted conditional discharges. The information contained in the file shall be
28 disclosed only to judges of the General Court of Justice of North Carolina for the purpose of
29 ascertaining whether any person charged with an offense has been previously granted a
30 discharge.

31 (h) Any person eligible for expunction of a criminal record under this section shall be
32 notified about the provisions of this section by the probation officer assigned to that person. If
33 no probation officer is assigned, notification of the provisions of this section shall be provided
34 by the court at the time of the conviction of the felony which is to be expunged under this
35 section.

36 (i) A person who files a petition for expunction of a criminal record under this section
37 must pay the clerk of superior court a fee of one hundred dollars (\$100.00) at the time the
38 petition is filed. Fees collected under this subsection shall be deposited in the General Fund.
39 This subsection does not apply to petitions filed by an indigent."

40 **SECTION 2.** This act becomes effective December 1, 2009, and expires December
41 1, 2016.