

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2007

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SENATE BILL 677\*

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

Sponsors: Senators Berger of Franklin; Dannelly and Malone.

Referred to: Judiciary II (Criminal).

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

23 (c) Whenever any person who had not yet attained the age of 18 years at the time  
24 of the offense and has not previously been convicted of any felony or misdemeanor  
25 other than a traffic violation under the laws of the United States, the laws of this State,  
26 or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file  
27 a petition in the court where the person was convicted for expunction of the nonviolent  
28 felony from the person's criminal record. The petition shall not be filed earlier than two  
29 years after the date of the conviction or when any active sentence, period of probation,

1 and post-release supervision has been served, whichever occurs later. The person shall  
2 also perform at least 100 hours of community service, preferably related to the  
3 conviction, before filing a petition for expunction under this section. The petition shall  
4 contain the following:

5 (1) An affidavit by the petitioner that the petitioner has been of good  
6 behavior for the two-year period since the date of conviction of the  
7 nonviolent felony in question and has not been convicted of any felony  
8 or misdemeanor other than a traffic violation under the laws of the  
9 United States or the laws of this State or any other state.

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

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

16 (4) An application on a form approved by the Administrative Office of the  
17 Courts requesting and authorizing a State and national criminal record  
18 check by the Department of Justice using any information required by  
19 the Administrative Office of the Courts to identify the individual and a  
20 search of the confidential records of expunctions maintained by the  
21 Administrative Office of the Courts. The application shall be  
22 forwarded to the Department of Justice and to the Administrative  
23 Office of the Courts to conduct the searches and report the findings to  
24 the court.

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

28 (6) An affidavit by the petitioner that the petitioner has performed at least  
29 100 hours of community service since the conviction for the  
30 nonviolent felony. The affidavit shall include a list of the community  
31 services performed, a list of the recipients of the services, and a  
32 detailed description of those services.

33 (7) An affidavit by the petitioner that the petitioner possesses a high  
34 school diploma or a high school graduation equivalency certificate or  
35 that the petitioner is attending a basic skills program in pursuit of a  
36 General Education Development Degree or adult high school diploma.

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

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

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

7           (1) The petitioner has remained of good behavior and has been free of  
8 conviction of any felony or misdemeanor, other than a traffic violation,  
9 for two years from the date of conviction of the nonviolent felony in  
10 question or any active sentence, period of probation, or post-release  
11 supervision has been served, whichever is later.

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

15           (3) The petitioner has no outstanding restitution orders or civil judgments  
16 representing amounts ordered for restitution entered against the  
17 petitioner.

18           (4) The petitioner was less than 18 years old at the time of the commission  
19 of the offense in question.

20           (5) The petitioner has performed at least 100 hours of community service  
21 since the time of the conviction and possesses a high school diploma  
22 or high school graduation equivalency certificate or is attending a  
23 program in pursuit of a General Education Development Degree or  
24 adult high school diploma.

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

28       No person as to whom an order has been entered pursuant to this subsection shall be  
29 held thereafter under any provision of any laws to be guilty of perjury or otherwise  
30 giving a false statement by reason of that person's failure to recite or acknowledge the  
31 arrest, indictment, information, trial, or conviction.

32       (e) The court shall also order that the nonviolent felony conviction be expunged  
33 from the records of the court and direct all law enforcement agencies bearing record of  
34 the same to expunge their records of the conviction. The clerk shall forward a certified  
35 copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,  
36 chief, or head of any other arresting agency shall then transmit the copy of the order  
37 with a form supplied by the State Bureau of Investigation to the State Bureau of  
38 Investigation, and the State Bureau of Investigation shall forward the order to the  
39 Federal Bureau of Investigation.

40       (f) Any other applicable State or local government agency shall expunge from its  
41 records entries made as a result of the conviction ordered expunged under this section.  
42 The agency shall also reverse any administrative actions taken against a person whose  
43 record is expunged under this section as a result of the charges or convictions expunged.

1 This subsection shall not apply to the Department of Justice for DNA records and  
2 samples stored in the State DNA Database and the State DNA Databank.

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

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

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

20 **SECTION 2.** This act becomes effective December 1, 2007, and expires  
21 December 1, 2014.