

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1329
PROPOSED COMMITTEE SUBSTITUTE H1329-PCS30319-SA-17

Short Title: Consolidate Expunction Statutes.

(Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES.

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-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

(a) Whenever any person who has not yet attained the age of 18 years and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the person was convicted for expunction of the offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction or (ii) the completion of any period of probation, whichever occurs later. The petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
- (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if



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1 different, the county of which the petitioner is a resident, showing that the
2 petitioner has not been convicted of a felony or misdemeanor other than a
3 traffic violation under the laws of this State (i) during the period of probation
4 since the decision to defer further proceedings on the offense in question
5 pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the
6 offense in question or during the two-year period following that conviction,
7 whichever applies.

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

11 The petition shall be served upon the district attorney of the court wherein the case was
12 tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file
13 any objection thereto and shall be duly notified as to the date of the hearing of the petition.

14 The judge to whom the petition is presented is authorized to call upon a probation officer
15 for any additional investigation or verification of the petitioner's conduct during the
16 probationary period or during the two-year period after conviction.

17 (b) If the court, after hearing, finds that the petitioner has remained of good behavior
18 and been free of conviction of any felony or misdemeanor other than a traffic violation for two
19 years from the date of conviction of the offense in question, the petitioner has no outstanding
20 restitution orders or civil judgments representing amounts ordered for restitution entered
21 against him, and the petitioner had not attained the age of 18 years at the time of the conviction
22 in question, it shall order that such person be restored, in the contemplation of the law, to the
23 status occupied by the petitioner before such arrest or indictment or information. No person as
24 to whom such order has been entered shall be held thereafter under any provision of any laws
25 to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to
26 recite or acknowledge such arrest, or indictment or information, or trial, or response to any
27 inquiry made of the person for any purpose. The court shall also order that the said conviction
28 be expunged from the records of the court and direct all law enforcement agencies bearing
29 record of the same to expunge their records of the conviction as the result of a criminal charge.
30 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
31 arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit
32 the copy of the order with a form supplied by the State Bureau of Investigation to the State
33 Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the
34 Federal Bureau of Investigation.

35 (c) This section is supplemental and in addition to existing law and shall not be
36 construed so as to repeal any existing provision contained in the General Statutes of North
37 Carolina."

38 **SECTION 2.** Article 5 of Chapter 15A of the General Statutes is amended by
39 adding a new section to read:

40 **"§ 15A-145.2. Expunction of records for first offenders under the age of 21 at the time of**
41 **the offense of certain drug offenses.**

42 (a) Whenever a person is discharged, and the proceedings against the person dismissed,
43 pursuant to G.S. 90-96(a), and the person was not over 21 years of age at the time of the
44 offense, the person may apply to the court for an order to expunge from all official records
45 (other than the confidential file to be retained by the Administrative Office of the Courts under
46 G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of
47 guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the
48 application the following:

49 (1) An affidavit by the applicant that he has been of good behavior during the
50 period of probation since the decision to defer further proceedings on the
51 offense in question and has not been convicted of any felony or

1 misdemeanor other than a traffic violation under the laws of the United
2 States or the laws of this State or any other state;

3 (2) Verified affidavits by two persons who are not related to the applicant or to
4 each other by blood or marriage, that they know the character and reputation
5 of the petitioner in the community in which he lives, and that his character
6 and reputation are good;

7 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
8 and sheriff of the county in which the petitioner was convicted, and, if
9 different, the county of which the petitioner is a resident, showing that the
10 applicant has not been convicted of a felony or misdemeanor other than a
11 traffic violation under the laws of this State at any time prior to the
12 conviction for the offense in question or during the period of probation
13 following the decision to defer further proceedings on the offense in
14 question.

15 The judge to whom the petition is presented is authorized to call upon a probation officer
16 for any additional investigation or verification of the petitioner's conduct during the
17 probationary period deemed desirable.

18 If the court determines, after hearing, that such person was discharged and the proceedings
19 against him dismissed and that he was not over 21 years of age at the time of the offense, it
20 shall enter such order. The effect of such order shall be to restore such person in the
21 contemplation of the law to the status he occupied before such arrest or indictment or
22 information. No person as to whom such order was entered shall be held thereafter under any
23 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
24 his failures to recite or acknowledge such arrest, or indictment or information, or trial in
25 response to any inquiry made of him for any purpose.

26 The court shall also order that said conviction and the records relating thereto be expunged
27 from the records of the court and direct all law enforcement agencies bearing records of the
28 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
29 order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff,
30 chief of police, or other arresting agency, as appropriate, shall forward such order to the State
31 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
32 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
33 Investigation.

34 (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90
35 of the General Statutes by possessing a controlled substance included within Schedules II
36 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under
37 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of
38 the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other
39 adjudication of innocence, such person may apply to the court for an order to expunge from all
40 official records all recordation relating to his arrest, indictment or information, or trial. If the
41 court determines, after hearing that such person was not over 21 years of age at the time any of
42 the proceedings against him occurred, it shall enter such order. No person as to whom such
43 order has been entered shall be held thereafter under any provision of any law to be guilty of
44 perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge
45 such arrest, or indictment or information, or trial in response to any inquiry made of him for
46 any purpose.

47 (c) Whenever any person who has not previously been convicted of an offense under
48 Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any
49 state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the
50 General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General
51 Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of

1 Chapter 90 of the General Statutes by possessing a controlled substance included within
2 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing
3 drug paraphernalia as prohibited by G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) by
4 possessing less than one gram of cocaine, the court may, upon application of the person not
5 sooner than 12 months after conviction, order cancellation of the judgment of conviction and
6 expunction of the records of his arrest, indictment or information, trial, and conviction. A
7 conviction in which the judgment of conviction has been canceled and the records expunged
8 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
9 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
10 a crime, including the additional penalties imposed for second or subsequent convictions of
11 Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this
12 subsection may occur only once with respect to any person. Disposition of a case under this
13 subsection at the district court division of the General Court of Justice shall be final for the
14 purpose of appeal.

15 The granting of an application filed under this subsection shall cause the issue of an order to
16 expunge from all official records (other than the confidential file to be retained by the
17 Administrative Office of the Courts under G.S. 90-96(c)) all recordation relating to the
18 petitioner's arrest, indictment or information, trial, finding of guilty, judgment of conviction,
19 cancellation of the judgment, and expunction of records pursuant to this subsection.

20 The judge to whom the petition is presented is authorized to call upon a probation officer
21 for additional investigation or verification of the petitioner's conduct since conviction. If the
22 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
23 Chapter 90 of the General Statutes for possessing a controlled substance included within
24 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
25 drug paraphernalia as prohibited in G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) for
26 possession of less than one gram of cocaine, that he was not over 21 years of age at the time of
27 the offense, that he has been of good behavior since his conviction, that he has successfully
28 completed a drug education program approved for this purpose by the Department of Health
29 and Human Services, and that he has not been convicted of a felony or misdemeanor other than
30 a traffic violation under the laws of this State at any time prior to or since the conviction for the
31 offense in question, it shall enter an order of expunction of the petitioner's court record. The
32 effect of such order shall be to restore the petitioner in the contemplation of the law to the
33 status he occupied before arrest or indictment or information or conviction. No person as to
34 whom such order was entered shall be held thereafter under any provision of any law to be
35 guilty of perjury or otherwise giving a false statement by reason of his failures to recite or
36 acknowledge such arrest, or indictment or information, or conviction, or trial in response to any
37 inquiry made of him for any purpose. The judge may waive the condition that the petitioner
38 attend the drug education school if the judge makes a specific finding that there was no drug
39 education school within a reasonable distance of the defendant's residence or that there were
40 specific extenuating circumstances which made it likely that the petitioner would not benefit
41 from the program of instruction.

42 The court shall also order that all law enforcement agencies bearing records of the
43 conviction and records relating thereto to expunge their records of the conviction. The clerk
44 shall forward a certified copy of the order to the sheriff, chief of police, or other arresting
45 agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of
46 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
47 Investigation shall forward the court order in like manner to the Federal Bureau of
48 Investigation.

49 The clerk of superior court in each county in North Carolina shall, as soon as practicable
50 after each term of court in his county, file with the Administrative Office of the Courts the
51 names of those persons whose judgments of convictions have been canceled and expunged

1 under the provisions of this subsection, and the Administrative Office of the Courts shall
2 maintain a confidential file containing the names of persons whose judgments of convictions
3 have been canceled and expunged. The information contained in the file shall be disclosed only
4 to judges of the General Court of Justice of North Carolina for the purpose of ascertaining
5 whether any person charged with an offense under Article 5 of Chapter 90 of the General
6 Statutes has been previously granted cancellation and expunction of a judgment of conviction
7 pursuant to the terms of this subsection.

8 (d) A person who files a petition for expunction of a criminal record under this section
9 must pay the clerk of superior court a fee of sixty-five dollars (\$65.00) at the time the petition
10 is filed. Fees collected under this subsection shall be deposited in the General Fund. This
11 subsection does not apply to petitions filed by an indigent."

12 **SECTION 3.** Article 5 of Chapter 15A of the General Statutes is amended by
13 adding a new section to read:

14 **"§ 15A-145.3. Expunction of records for first offenders under the age of 21 at the time of**
15 **the offense of certain toxic vapors offenses.**

16 (a) Whenever a person is discharged and the proceedings against the person dismissed
17 under G.S. 90-113.14(a), such person, if he was not over 21 years of age at the time of the
18 offense, may apply to the court for an order to expunge from all official records (other than the
19 confidential file to be retained by the Administrative Office of the Courts under
20 G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding
21 of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the
22 application the following:

- 23 (1) An affidavit by the applicant that he has been of good behavior during the
24 period of probation since the decision to defer further proceedings on the
25 misdemeanor in question and has not been convicted of any felony or
26 misdemeanor other than a traffic violation under the laws of the United
27 States or the laws of this State or any other state;
- 28 (2) Verified affidavits by two persons who are not related to the applicant or to
29 each other by blood or marriage, that they know the character and reputation
30 of the petitioner in the community in which he lives, and that his character
31 and reputation are good;
- 32 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
33 and sheriff of the county in which the petitioner was convicted, and, if
34 different, the county of which the petitioner is a resident, showing that the
35 applicant has not been convicted of a felony or misdemeanor other than a
36 traffic violation under the laws of this State at any time prior to the
37 conviction for the misdemeanor in question or during the period of probation
38 following the decision to defer further proceedings on the misdemeanor in
39 question.

40 The judge to whom the petition is presented is authorized to call upon a probation officer
41 for any additional investigation or verification of the petitioner's conduct during the
42 probationary period deemed desirable.

43 If the court determines, after hearing, that such person was discharged and the proceedings
44 against him dismissed and that he was not over 21 years of age at the time of the offense, it
45 shall enter such order. The effect of such order shall be to restore such person in the
46 contemplation of the law to the status he occupied before such arrest or indictment or
47 information. No person as to whom such order was entered shall be held thereafter under any
48 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
49 his failures to recite or acknowledge such arrest, or indictment or information, or trial in
50 response to any inquiry made of him for any purpose.

1 The court shall also order that said conviction and the records relating thereto be expunged
2 from the records of the court and direct all law enforcement agencies bearing records of the
3 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
4 order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff,
5 chief of police, or other arresting agency, as appropriate, shall forward such order to the State
6 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
7 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
8 Investigation.

9 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter
10 90 of the General Statutes by possessing a controlled substance included within Schedules II
11 through VI of Article 5 of Chapter 90 of the General Statutes, or by possessing drug
12 paraphernalia as prohibited by G.S. 90-113.21, upon dismissal by the State of the charges
13 against him or upon entry of a nolle prosequi or upon a finding of not guilty or other
14 adjudication of innocence, such person may apply to the court for an order to expunge from all
15 official records all recordation relating to his arrest, indictment or information, and trial. If the
16 court determines, after hearing that such person was not over 21 years of age at the time any of
17 the proceedings against him occurred, it shall enter such order. No person as to whom such
18 order has been entered shall be held thereafter under any provision of any law to be guilty of
19 perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge
20 such arrest, or indictment or information, or trial in response to any inquiry made of him for
21 any purpose.

22 (c) Whenever any person who has not previously been convicted of an offense under
23 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States
24 or any state relating to controlled substances included in any schedule of Article 5 of Chapter
25 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the
26 General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A
27 of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner
28 than 12 months after conviction, order cancellation of the judgment of conviction and
29 expunction of the records of his arrest, indictment or information, trial, and conviction. A
30 conviction in which the judgment of conviction has been cancelled and the records expunged
31 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
32 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
33 a crime, including the additional penalties imposed for second or subsequent convictions of
34 violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction
35 under this subsection may occur only once with respect to any person. Disposition of a case
36 under this subsection at the district court division of the General Court of Justice shall be final
37 for the purpose of appeal.

38 The granting of an application filed under this subsection shall cause the issue of an order to
39 expunge from all official records (other than the confidential file to be retained by the
40 Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his
41 arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation
42 of the judgment, and expunction of records pursuant to this subsection.

43 The judge to whom the petition is presented is authorized to call upon a probation officer
44 for additional investigation or verification of the petitioner's conduct since conviction. If the
45 court determines that the petitioner was convicted of a misdemeanor under Article 5A of
46 Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by
47 G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been
48 of good behavior since his conviction, that he has successfully completed a drug education
49 program approved for this purpose by the Department of Health and Human Services, and that
50 he has not been convicted of a felony or misdemeanor other than a traffic violation under the
51 laws of this State at any time prior to or since the conviction for the misdemeanor in question, it

1 shall enter an order of expunction of the petitioner's court record. The effect of such order shall
2 be to restore the petitioner in the contemplation of the law to the status he occupied before such
3 arrest or indictment or information or conviction. No person as to whom such order was entered
4 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise
5 giving a false statement by reason of his failures to recite or acknowledge such arrest, or
6 indictment or information, or conviction, or trial in response to any inquiry made of him for any
7 purpose. The judge may waive the condition that the petitioner attend the drug education school
8 if the judge makes a specific finding that there was no drug education school within a
9 reasonable distance of the defendant's residence or that there were specific extenuating
10 circumstances which made it likely that the petitioner would not benefit from the program of
11 instruction.

12 The court shall also order that all law enforcement agencies bearing records of the
13 conviction and records relating thereto to expunge their records of the conviction. The clerk
14 shall forward a certified copy of the order to the sheriff, chief of police, or other arresting
15 agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of
16 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
17 Investigation shall forward the court order in like manner to the Federal Bureau of
18 Investigation.

19 The clerk of superior court in each county in North Carolina shall, as soon as practicable
20 after each term of court in his county, file with the Administrative Office of the Courts the
21 names of those persons whose judgments of convictions have been cancelled and expunged
22 under the provisions of this subsection, and the Administrative Office of the Courts shall
23 maintain a confidential file containing the names of persons whose judgments of convictions
24 have been cancelled and expunged. The information contained in the file shall be disclosed
25 only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining
26 whether any person charged with an offense under this Article has been previously granted
27 cancellation and expunction of a judgment of conviction pursuant to the terms of this Article."

28 **SECTION 4.** G.S. 14-50.30 reads as rewritten:

29 **"§ 14-50.30. Expunction of records.**

30 (a) ~~Whenever any~~ Any person who has not yet attained the age of 18 years and has not
31 previously been convicted of any felony or misdemeanor other than a traffic violation under the
32 laws of the United States or the laws of this State or any other state, may be eligible to apply
33 for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1. ~~pleads guilty~~
34 ~~to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under~~
35 ~~G.S. 14-50.22, the person may file a petition in the court where the person was convicted for~~
36 ~~expunction of the offense from the person's criminal record. Except as provided in~~
37 ~~G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier than (i) two~~
38 ~~years after the date of the conviction or (ii) the completion of any period of probation,~~
39 ~~whichever occurs later. The petition shall contain, but not be limited to, the following:~~

40 (1) ~~An affidavit by the petitioner that the petitioner has been of good behavior~~
41 ~~(i) during the period of probation since the decision to defer further~~
42 ~~proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)~~
43 ~~during the two-year period since the date of conviction of the offense in~~
44 ~~question, whichever applies, and has not been convicted of any felony, or~~
45 ~~misdemeanor other than a traffic violation, under the laws of the United~~
46 ~~States or the laws of this State or any other state.~~

47 (2) ~~Verified affidavits of two persons who are not related to the petitioner or to~~
48 ~~each other by blood or marriage, that they know the character and reputation~~
49 ~~of the petitioner in the community in which the petitioner lives, and that the~~
50 ~~petitioner's character and reputation are good.~~

- 1 (3) If the petition is filed subsequent to conviction of the offense in question, a
2 statement that the petition is a motion in the cause in the case wherein the
3 petitioner was convicted.
- 4 (4) Affidavits of the clerk of superior court, chief of police, where appropriate,
5 and sheriff of the county in which the petitioner was convicted and, if
6 different, the county of which the petitioner is a resident, showing that the
7 petitioner has not been convicted of a felony or misdemeanor other than a
8 traffic violation under the laws of this State (i) during the period of probation
9 since the decision to defer further proceedings on the offense in question
10 pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the
11 offense in question or during the two-year period following that conviction,
12 whichever applies.
- 13 (5) An affidavit by the petitioner that no restitution orders or civil judgments
14 representing amounts ordered for restitution entered against the petitioner
15 are outstanding.

16 The petition shall be served upon the district attorney of the court wherein the case was
17 tried resulting in conviction. The district attorney shall have 10 days thereafter in which to file
18 any objection thereto and shall be duly notified as to the date of the hearing of the petition.

19 The judge to whom the petition is presented is authorized to call upon a probation officer
20 for any additional investigation or verification of the petitioner's conduct during the
21 probationary period or during the two-year period after conviction.

22 (b) If the court, after hearing, finds that the petitioner has remained of good behavior
23 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
24 years from the date of conviction of the offense in question, the petitioner has no outstanding
25 restitution orders or civil judgments representing amounts ordered for restitution entered
26 against him, and the petitioner had not attained the age of 18 years at the time of the conviction
27 in question, it shall order that such person be restored, in the contemplation of the law, to the
28 status occupied by the petitioner before such arrest or indictment or information. No person as
29 to whom such order has been entered shall be held thereafter under any provision of any laws
30 to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to
31 recite or acknowledge such arrest, or indictment, information, or trial, or response to any
32 inquiry made of the person for any purpose. The court shall also order that the said conviction
33 be expunged from the records of the court, and direct all law enforcement agencies bearing
34 record of the same to expunge their records of the conviction as the result of a criminal charge.
35 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
36 arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit
37 the copy of the order with a form supplied by the State Bureau of Investigation to the State
38 Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the
39 Federal Bureau of Investigation.

40 (c) This section is supplemental and in addition to existing law and shall not be
41 construed so as to repeal any existing provision contained in the General Statutes of North
42 Carolina."

43 **SECTION 5.** G.S. 90-96 reads as rewritten:

44 "**§ 90-96. Conditional discharge and expunction of records for first offense.**

45 (a) Whenever any person who has not previously been convicted of any offense under
46 this Article or under any statute of the United States or any state relating to those substances
47 included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of
48 Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by
49 possessing a controlled substance included within Schedules II through VI of this Article or by
50 possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under
51 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a

1 judgment of guilt and with the consent of such person, defer further proceedings and place him
2 on probation upon such reasonable terms and conditions as it may require. Notwithstanding the
3 provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under
4 this section for an offense under this Article for which the prescribed punishment includes only
5 a fine. To fulfill the terms and conditions of probation the court may allow the defendant to
6 participate in a drug education program approved for this purpose by the Department of Health
7 and Human Services. Upon violation of a term or condition, the court may enter an
8 adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and
9 conditions, the court shall discharge such person and dismiss the proceedings against him.
10 Discharge and dismissal under this section shall be without court adjudication of guilt and shall
11 not be deemed a conviction for purposes of this section or for purposes of disqualifications or
12 disabilities imposed by law upon conviction of a crime including the additional penalties
13 imposed for second or subsequent convictions under this Article. Discharge and dismissal
14 under this section or G.S. 90-113.14 may occur only once with respect to any person.
15 Disposition of a case to determine discharge and dismissal under this section at the district
16 court division of the General Court of Justice shall be final for the purpose of appeal. Prior to
17 taking any action to discharge and dismiss under this section the court shall make a finding that
18 the defendant has no record of previous convictions under the "North Carolina Controlled
19 Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A,
20 Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

21 (a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or
22 G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place
23 defendant on probation under this section for an offense under this Article including an offense
24 for which the prescribed punishment includes only a fine. The probation, if imposed, shall be
25 for not less than one year and shall contain a minimum condition that the defendant who was
26 found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of
27 the imposition of said probation, the program of instruction at the drug education school
28 approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The
29 court may impose probation that does not contain a condition that defendant successfully
30 complete the program of instruction at a drug education school if:

- 31 (1) There is no drug education school within a reasonable distance of the
32 defendant's residence; or
- 33 (2) There are specific, extenuating circumstances which make it likely that
34 defendant will not benefit from the program of instruction.

35 The court shall enter such specific findings in the record; provided that in the case of
36 subdivision (2) above, such findings shall include the specific, extenuating circumstances
37 which make it likely that the defendant will not benefit from the program of instruction.

38 For the purposes of determining whether the conviction is a first conviction or whether a
39 person has already had discharge and dismissal, no prior offense occurring more than seven
40 years before the date of the current offense shall be considered. In addition, convictions for
41 violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or
42 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

43 Failure to complete successfully an approved program of instruction at a drug education
44 school shall constitute grounds to revoke probation and deny application for expunction of all
45 recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and
46 dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase
47 "failure to complete successfully the prescribed program of instruction at a drug education
48 school" includes failure to attend scheduled classes without a valid excuse, failure to complete
49 the course within 150 days of imposition of probation, willful failure to pay the required fee for
50 the course, or any other manner in which the person fails to complete the course successfully.
51 The instructor of the course to which a person is assigned shall report any failure of a person to

1 complete successfully the program of instruction to the court which imposed probation. Upon
2 receipt of the instructor's report that the person failed to complete the program successfully, the
3 court shall revoke probation and/or deny application for expunction of all recordation of
4 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and
5 discharge pursuant to this section. A person may obtain a hearing before the court of original
6 jurisdiction prior to revocation of probation or denial of application for expunction.

7 This subsection is supplemental and in addition to existing law and shall not be construed
8 so as to repeal any existing provision contained in the General Statutes of North Carolina.

9 (b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the
10 proceedings against him under subsection (a) of this section, such person, if he were not over
11 21 years of age at the time of the offense, may be eligible to apply for expunction of certain
12 records relating to the offense pursuant to G.S. 15A-145.2(a). ~~may apply to the court for an~~
13 ~~order to expunge from all official records (other than the confidential file to be retained by the~~
14 ~~Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest,~~
15 ~~indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this~~
16 ~~section. The applicant shall attach to the application the following:~~

- 17 (1) ~~An affidavit by the applicant that he has been of good behavior during the~~
18 ~~period of probation since the decision to defer further proceedings on the~~
19 ~~offense in question and has not been convicted of any felony, or~~
20 ~~misdemeanor, other than a traffic violation, under the laws of the United~~
21 ~~States or the laws of this State or any other state;~~
- 22 (2) ~~Verified affidavits by two persons who are not related to the applicant or to~~
23 ~~each other by blood or marriage, that they know the character and reputation~~
24 ~~of the petitioner in the community in which he lives, and that his character~~
25 ~~and reputation are good;~~
- 26 (3) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~
27 ~~and sheriff of the county in which the petitioner was convicted, and, if~~
28 ~~different, the county of which the petitioner is a resident, showing that the~~
29 ~~applicant has not been convicted of a felony or misdemeanor other than a~~
30 ~~traffic violation under the laws of this State at any time prior to the~~
31 ~~conviction for the offense in question or during the period of probation~~
32 ~~following the decision to defer further proceedings on the offense in~~
33 ~~question.~~

34 The judge to whom the petition is presented is authorized to call upon a probation officer
35 for any additional investigation or verification of the petitioner's conduct during the
36 probationary period deemed desirable.

37 If the court determines, after hearing, that such person was dismissed and the proceedings
38 against him discharged and that he was not over 21 years of age at the time of the offense, it
39 shall enter such order. The effect of such order shall be to restore such person in the
40 contemplation of the law to the status he occupied before such arrest or indictment or
41 information. No person as to whom such order was entered shall be held thereafter under any
42 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
43 his failures to recite or acknowledge such arrest, or indictment or information, or trial in
44 response to any inquiry made of him for any purpose.

45 The court shall also order that said conviction and the records relating thereto be expunged
46 from the records of the court, and direct all law enforcement agencies bearing records of the
47 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
48 order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,
49 chief of police or other arresting agency, as appropriate, shall forward such order to the State
50 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State

1 ~~Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of~~
2 ~~Investigation.~~

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

11 (d) Whenever any person is charged with a misdemeanor under this Article by
12 possessing a controlled substance included within Schedules II through VI of this Article or a
13 felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by
14 the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not
15 guilty or other adjudication of innocence, the person may be eligible to apply for expunction of
16 certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to~~
17 ~~the court for an order to expunge from all official records all recordation relating to his arrest,~~
18 ~~indictment or information, or trial. If the court determines, after hearing that such person was~~
19 ~~not over 21 years of age at the time any of the proceedings against him occurred, it shall enter~~
20 ~~such order. No person as to whom such order has been entered shall be held thereafter under~~
21 ~~any provision of any law to be guilty of perjury or otherwise giving a false statement by reason~~
22 ~~of his failures to recite or acknowledge such arrest, or indictment or information, or trial in~~
23 ~~response to any inquiry made of him for any purpose.~~

24 (e) Whenever any person who has not previously been convicted of an offense under
25 this Article or under any statute of the United States or any state relating to controlled
26 substances included in any schedule of this Article or to that paraphernalia included in Article
27 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this
28 Article by possessing a controlled substance included within Schedules II through VI of this
29 Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony
30 under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible
31 to apply for cancellation of the judgment and expunction of certain records related to the
32 offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the person not sooner~~
33 ~~than 12 months after conviction, order cancellation of the judgment of conviction and~~
34 ~~expunction of the records of his arrest, indictment, or information, trial and conviction. A~~
35 ~~conviction in which the judgment of conviction has been canceled and the records expunged~~
36 ~~pursuant to this section shall not be thereafter deemed a conviction for purposes of this section~~
37 ~~or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime~~
38 ~~including the additional penalties imposed for second or subsequent convictions of this Article.~~
39 ~~Cancellation and expunction under this section may occur only once with respect to any person.~~
40 ~~Disposition of a case under this section at the district court division of the General Court of~~
41 ~~Justice shall be final for the purpose of appeal.~~

42 ~~The granting of an application filed under this section shall cause the issue of an order to~~
43 ~~expunge from all official records (other than the confidential file to be retained by the~~
44 ~~Administrative Office of the Courts under subsection (e)) all recordation relating to the~~
45 ~~petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of conviction,~~
46 ~~cancellation of the judgment, and expunction of records pursuant to this section.~~

47 ~~The judge to whom the petition is presented is authorized to call upon a probation officer~~
48 ~~for additional investigation or verification of the petitioner's conduct since conviction. If the~~
49 ~~court determines that the petitioner was convicted of (i) a misdemeanor under this Article for~~
50 ~~possessing a controlled substance included within Schedules II through VI of this Article, or for~~
51 ~~possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under~~

1 G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years
2 of age at the time of the offense, that he has been of good behavior since his conviction, that he
3 has ~~successfully completed a drug education program approved for this purpose by the~~
4 ~~Department of Health and Human Services, and that he has not been convicted of a felony or~~
5 ~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or~~
6 ~~since the conviction for the offense in question, it shall enter an order of expunction of the~~
7 ~~petitioner's court record. The effect of such order shall be to restore the petitioner in the~~
8 ~~contemplation of the law to the status he occupied before arrest or indictment or information or~~
9 ~~conviction. No person as to whom such order was entered shall be held thereafter under any~~
10 ~~provision of any law to be guilty of perjury or otherwise giving a false statement by reason of~~
11 ~~his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or~~
12 ~~trial in response to any inquiry made of him for any purpose. The judge may waive the~~
13 ~~condition that the petitioner attend the drug education school if the judge makes a specific~~
14 ~~finding that there was no drug education school within a reasonable distance of the defendant's~~
15 ~~residence or that there were specific extenuating circumstances which made it likely that the~~
16 ~~petitioner would not benefit from the program of instruction.~~

17 ~~The court shall also order that all law enforcement agencies bearing records of the~~
18 ~~conviction and records relating thereto to expunge their records of the conviction. The clerk~~
19 ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting~~
20 ~~agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of~~
21 ~~Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of~~
22 ~~Investigation shall forward the court order in like manner to the Federal Bureau of~~
23 ~~Investigation.~~

24 ~~The clerk of superior court in each county in North Carolina shall, as soon as practicable~~
25 ~~after each term of court in his county, file with the Administrative Office of the Courts the~~
26 ~~names of those persons whose judgments of convictions have been canceled and expunged~~
27 ~~under the provisions of this Article, and the Administrative Office of the Courts shall maintain~~
28 ~~a confidential file containing the names of persons whose judgments of convictions have been~~
29 ~~canceled and expunged. The information contained in the file shall be disclosed only to judges~~
30 ~~of the General Court of Justice of North Carolina for the purpose of ascertaining whether any~~
31 ~~person charged with an offense under this Article has been previously granted cancellation and~~
32 ~~expunction of a judgment of conviction pursuant to the terms of this Article.~~

33 ~~(f) A person who files a petition for expunction of a criminal record under this section~~
34 ~~must pay the clerk of superior court a fee of sixty five dollars (\$65.00) at the time the petition~~
35 ~~is filed. Fees collected under this subsection shall be deposited in the General Fund. This~~
36 ~~subsection does not apply to petitions filed by an indigent."~~

37 **SECTION 6.** G.S. 90-113.14 reads as rewritten:

38 **"§ 90-113.14. Conditional discharge and expunction of records for first offenses.**

39 (a) Whenever any person who has not previously been convicted of any offense under
40 this Article or under any statute of the United States or any state relating to those substances
41 included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or
42 possessing any substance having the property of releasing toxic vapors or fumes in violation of
43 Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the
44 consent of such person, defer further proceedings and place him on probation upon such
45 reasonable terms and conditions as it may require. Notwithstanding the provisions of
46 G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for
47 an offense under this Article for which the prescribed punishment includes only a fine. To
48 fulfill the terms and conditions of probation the court may allow the defendant to participate in
49 a drug education program approved for this purpose by the Department of Health and Human
50 Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and
51 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall

1 discharge such person and dismiss the proceedings against him. Discharge and dismissal under
2 this section shall be without court adjudication of guilt and shall not be deemed a conviction for
3 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon
4 conviction of a crime including the additional penalties imposed for second or subsequent
5 convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once
6 with respect to any person. Disposition of a case to determine discharge and dismissal under
7 this section at the district court division of the General Court of Justice shall be final for the
8 purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court
9 shall make a finding that the defendant has no record of previous convictions under the "North
10 Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled
11 Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter
12 90.

13 (a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or
14 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant
15 on probation under this section for an offense under this Article including an offense for which
16 the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less
17 than one year and shall contain a minimum condition that the defendant who was found guilty
18 or pleads guilty enroll in and successfully complete, within 150 days of the date of the
19 imposition of said probation, the program of instruction at the drug education school approved
20 by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may
21 impose probation that does not contain a condition that defendant successfully complete the
22 program of instruction at a drug education school if:

- 23 (1) There is no drug education school within a reasonable distance of the
24 defendant's residence; or
- 25 (2) There are specific, extenuating circumstances which make it likely that
26 defendant will not benefit from the program of instruction.

27 The court shall enter such specific findings in the record; provided that in the case of subsection
28 (2) above, such findings shall include the specific, extenuating circumstances which make it
29 likely that the defendant will not benefit from the program of instruction.

30 For the purpose of determining whether the conviction is a first conviction or whether a
31 person has already had discharge and dismissal, no prior offense occurring more than seven
32 years before the date of the current offense shall be considered. In addition, convictions for
33 violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or
34 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

35 Failure to complete successfully an approved program of instruction at a drug education
36 school shall constitute grounds to revoke probation and deny application for expunction of all
37 recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and
38 dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase
39 "failure to complete successfully the prescribed program of instruction at a drug education
40 school" includes failure to attend scheduled classes without a valid excuse, failure to complete
41 the course within 150 days of imposition of probation, willful failure to pay the required fee for
42 the course, or any other manner in which the person fails to complete the course successfully.
43 The instructor of the course to which a person is assigned shall report any failure of a person to
44 complete successfully the program of instruction to the court which imposed probation. Upon
45 receipt of the instructor's report that the person failed to complete the program successfully, the
46 court shall revoke probation and/or deny application for expunction of all recordation of
47 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and
48 discharge pursuant to this section. A person may obtain a hearing before the court of original
49 jurisdiction prior to revocation of probation or denial of application for expunction.

50 This subsection is supplemental and in addition to existing law and shall not be construed
51 so as to repeal any existing provision contained in the General Statutes of North Carolina.

1 (b) Upon the dismissal of such person, and discharge of the proceedings against him
2 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
3 of the offense, may be eligible to apply for expunction of certain records relating to the offense
4 pursuant to G.S. 15A-145.3(a).~~may apply to the court for an order to expunge from all official~~
5 ~~records (other than the confidential file to be retained by the Administrative Office of the~~
6 ~~Courts under subsection (e)) all recordation relating to his arrest, indictment or information,~~
7 ~~trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall~~
8 ~~attach to the application the following:~~

- 9 (1) ~~An affidavit by the applicant that he has been of good behavior during the~~
10 ~~period of probation since the decision to defer further proceedings on the~~
11 ~~misdemeanor in question and has not been convicted of any felony, or~~
12 ~~misdemeanor, other than a traffic violation, under the laws of the United~~
13 ~~States or the laws of this State or any other state;~~
- 14 (2) ~~Verified affidavits by two persons who are not related to the applicant or to~~
15 ~~each other by blood or marriage, that they know the character and reputation~~
16 ~~of the petitioner in the community in which he lives, and that his character~~
17 ~~and reputation are good;~~
- 18 (3) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~
19 ~~and sheriff of the county in which the petitioner was convicted, and, if~~
20 ~~different, the county of which the petitioner is a resident, showing that the~~
21 ~~applicant has not been convicted of a felony or misdemeanor other than a~~
22 ~~traffic violation under the laws of this State at any time prior to the~~
23 ~~conviction for the misdemeanor in question or during the period of probation~~
24 ~~following the decision to defer further proceedings on the misdemeanor in~~
25 ~~question.~~

26 ~~The judge to whom the petition is presented is authorized to call upon a probation officer~~
27 ~~for any additional investigation or verification of the petitioner's conduct during the~~
28 ~~probationary period deemed desirable.~~

29 ~~If the court determines, after hearing, that such person was dismissed and the proceedings~~
30 ~~against him discharged and that he was not over 21 years of age at the time of the offense, it~~
31 ~~shall enter such order. The effect of such order shall be to restore such person in the~~
32 ~~contemplation of the law to the status he occupied before such arrest or indictment or~~
33 ~~information. No person as to whom such order was entered shall be held thereafter under any~~
34 ~~provision of any law to be guilty of perjury or otherwise giving a false statement by reason of~~
35 ~~his failures to recite or acknowledge such arrest, or indictment or information, or trial in~~
36 ~~response to any inquiry made of him for any purpose.~~

37 ~~The court shall also order that said conviction and the records relating thereto be expunged~~
38 ~~from the records of the court, and direct all law enforcement agencies bearing records of the~~
39 ~~same to expunge their records of the conviction. The clerk shall forward a certified copy of the~~
40 ~~order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,~~
41 ~~chief of police or other arresting agency, as appropriate, shall forward such order to the State~~
42 ~~Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State~~
43 ~~Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of~~
44 ~~Investigation.~~

45 (c) The clerk of superior court in each county in North Carolina shall, as soon as
46 practicable after each term of court in his county, file with the Commission, the names of all
47 persons convicted under such Articles, together with the offense or offenses of which such
48 persons were convicted. The clerk shall also file with the Administrative Office of the Courts
49 the names of those persons granted a conditional discharge under the provisions of this Article,
50 and the Administrative Office of the Court shall maintain a confidential file containing the
51 names of persons granted conditional discharges. The information contained in such file shall

1 be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of
2 ascertaining whether any person charged with an offense under Article 5 or 5A has been
3 previously granted a conditional discharge.

4 (d) Whenever any person is charged with a misdemeanor under this Article by
5 possessing a controlled substance included within Schedules II through VI of this Article, or by
6 possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of
7 the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or
8 other adjudication of innocence, the person may be eligible to apply for expunction of certain
9 records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person may apply to the~~
10 ~~court for an order to expunge from all official records all recordation relating to his arrest,~~
11 ~~indictment, or information, and trial. If the court determines, after hearing that such person was~~
12 ~~not over 21 years of age at the time any of the proceedings against him occurred, it shall enter~~
13 ~~such order. No person as to whom such order has been entered shall be held thereafter under~~
14 ~~any provision of any law to be guilty of perjury or otherwise giving a false statement by reason~~
15 ~~of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in~~
16 ~~response to any inquiry made of him for any purpose.~~

17 (e) Whenever any person who has not previously been convicted of an offense under
18 this Article or under any statute of the United States or any state relating to controlled
19 substances included in any schedule of this Article or to that paraphernalia included in Article
20 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article
21 by possessing a controlled substance included within Schedules II through VI of this Article,
22 the person may be eligible to apply for cancellation of the judgment and expunction of certain
23 records related to the offense pursuant to G.S. 15A-145.3(c).~~the court may, upon application of~~
24 ~~the person not sooner than 12 months after conviction, order cancellation of the judgment of~~
25 ~~conviction and expunction of the records of his arrest, indictment, or information, trial and~~
26 ~~conviction. A conviction in which the judgment of conviction has been cancelled and the~~
27 ~~records expunged pursuant to this section shall not be thereafter deemed a conviction for~~
28 ~~purposes of this section or for purposes of disqualifications or liabilities imposed by law upon~~
29 ~~conviction of a crime including the additional penalties imposed for second or subsequent~~
30 ~~convictions of this Article. Cancellation and expunction under this section may occur only once~~
31 ~~with respect to any person. Disposition of a case under this section at the district court division~~
32 ~~of the General Court of Justice shall be final for the purpose of appeal.~~

33 ~~The granting of an application filed under this section shall cause the issue of an order to~~
34 ~~expunge from all official records (other than the confidential file to be retained by the~~
35 ~~Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest,~~
36 ~~indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the~~
37 ~~judgment, and expunction of records pursuant to this section.~~

38 ~~The judge to whom the petition is presented is authorized to call upon a probation officer~~
39 ~~for additional investigation or verification of the petitioner's conduct since conviction. If the~~
40 ~~court determines that the petitioner was convicted of a misdemeanor under this Article for~~
41 ~~possessing a controlled substance included within Schedules II through VI of this Article, or for~~
42 ~~possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of~~
43 ~~age at the time of the offense, that he has been of good behavior since his conviction, that he~~
44 ~~has successfully completed a drug education program approved for this purpose by the~~
45 ~~Department of Health and Human Services, and that he has not been convicted of a felony or~~
46 ~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or~~
47 ~~since the conviction for the misdemeanor in question, it shall enter an order of expunction of~~
48 ~~the petitioner's court record. The effect of such order shall be to restore the petitioner in the~~
49 ~~contemplation of the law to the status he occupied before such arrest or indictment or~~
50 ~~information or conviction. No person as to whom such order was entered shall be held~~
51 ~~thereafter under any provision of any law to be guilty of perjury or otherwise giving a false~~

1 ~~statement by reason of his failures to recite or acknowledge such arrest, or indictment or~~
2 ~~information, or conviction, or trial in response to any inquiry made of him for any purpose. The~~
3 ~~judge may waive the condition that the petitioner attend the drug education school if the judge~~
4 ~~makes a specific finding that there was no drug education school within a reasonable distance~~
5 ~~of the defendant's residence or that there were specific extenuating circumstances which made~~
6 ~~it likely that the petitioner would not benefit from the program of instruction.~~

7 ~~The court shall also order that all law enforcement agencies bearing records of the~~
8 ~~conviction and records relating thereto to expunge their records of the conviction. The clerk~~
9 ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting~~
10 ~~agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of~~
11 ~~Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of~~
12 ~~Investigation shall forward the court order in like manner to the Federal Bureau of~~
13 ~~Investigation.~~

14 ~~The clerk of superior court in each county in North Carolina shall, as soon as practicable~~
15 ~~after each term of court in his county, file with the Administrative Office of the Courts the~~
16 ~~names of those persons whose judgments of convictions have been cancelled and expunged~~
17 ~~under the provisions of this Article, and the Administrative Office of the Courts shall maintain~~
18 ~~a confidential file containing the names of persons whose judgments of convictions have been~~
19 ~~cancelled and expunged. The information contained in the file shall be disclosed only to judges~~
20 ~~of the General Court of Justice of North Carolina for the purpose of ascertaining whether any~~
21 ~~person charged with an offense under this Article has been previously granted cancellation and~~
22 ~~expunction of a judgment of conviction pursuant to the terms of this Article."~~

23 **SECTION 7.** ~~This act becomes effective December 1, 2009, and applies to~~
24 ~~offenses committed on or after that date.~~