

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1329
Committee Substitute Favorable 4/29/09
PROPOSED COMMITTEE SUBSTITUTE H1329-PCS80411-RF-45

Short Title: Consolidate Expunction Statutes.

(Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF
3 RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES.
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-145.1. Expunction of records for first offenders under the age of 18 at the time of**
8 **conviction of certain gang offenses.**

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

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

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

30 (3) If the petition is filed subsequent to conviction of the offense in question, a
31 statement that the petition is a motion in the cause in the case wherein the
32 petitioner was convicted.



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

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

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

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

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

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

42 **"§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
43 **time of the offense of certain drug offenses.**

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

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

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

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

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

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

50 (c) Whenever any person who has not previously been convicted of an offense under
51 Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any

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

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

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

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

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

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

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

17 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
18 **time of the offense of certain toxic vapors offenses.**

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

26 (1) An affidavit by the applicant that he has been of good behavior during the
27 period of probation since the decision to defer further proceedings on the
28 misdemeanor in question and has not been convicted of any felony or
29 misdemeanor other than a traffic violation under the laws of the United
30 States or the laws of this State or any other state;

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

35 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
36 and sheriff of the county in which the petitioner was convicted, and, if
37 different, the county of which the petitioner is a resident, showing that the
38 applicant has not been convicted of a felony or misdemeanor other than a
39 traffic violation under the laws of this State at any time prior to the
40 conviction for the misdemeanor in question or during the period of probation
41 following the decision to defer further proceedings on the misdemeanor in
42 question.

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

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

1 his failures to recite or acknowledge such arrest, or indictment or information, or trial in
2 response to any inquiry made of him for any purpose.

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

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

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

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

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

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

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

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

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

31 **"§ 14-50.30. Expunction of records.**

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

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

49 (2) ~~Verified affidavits of two persons who are not related to the petitioner or to~~
50 ~~each other by blood or marriage, that they know the character and reputation~~

1 of the petitioner in the community in which the petitioner lives, and that the
2 petitioner's character and reputation are good.

3 (3) ~~If the petition is filed subsequent to conviction of the offense in question, a
4 statement that the petition is a motion in the cause in the case wherein the
5 petitioner was convicted.~~

6 (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,
7 and sheriff of the county in which the petitioner was convicted and, if
8 different, the county of which the petitioner is a resident, showing that the
9 petitioner has not been convicted of a felony or misdemeanor other than a
10 traffic violation under the laws of this State (i) during the period of probation
11 since the decision to defer further proceedings on the offense in question
12 pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the
13 offense in question or during the two-year period following that conviction,
14 whichever applies.~~

15 (5) ~~An affidavit by the petitioner that no restitution orders or civil judgments
16 representing amounts ordered for restitution entered against the petitioner
17 are outstanding.~~

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

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

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

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

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

46 **"§ 90-96. Conditional discharge and expunction of records for first offense.**

47 (a) Whenever any person who has not previously been convicted of any offense under
48 this Article or under any statute of the United States or any state relating to those substances
49 included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of
50 Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by
51 possessing a controlled substance included within Schedules II through VI of this Article or by

1 possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under
2 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a
3 judgment of guilt and with the consent of such person, defer further proceedings and place him
4 on probation upon such reasonable terms and conditions as it may require. Notwithstanding the
5 provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under
6 this section for an offense under this Article for which the prescribed punishment includes only
7 a fine. To fulfill the terms and conditions of probation the court may allow the defendant to
8 participate in a drug education program approved for this purpose by the Department of Health
9 and Human Services. Upon violation of a term or condition, the court may enter an
10 adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and
11 conditions, the court shall discharge such person and dismiss the proceedings against him.
12 Discharge and dismissal under this section shall be without court adjudication of guilt and shall
13 not be deemed a conviction for purposes of this section or for purposes of disqualifications or
14 disabilities imposed by law upon conviction of a crime including the additional penalties
15 imposed for second or subsequent convictions under this Article. Discharge and dismissal
16 under this section or G.S. 90-113.14 may occur only once with respect to any person.
17 Disposition of a case to determine discharge and dismissal under this section at the district
18 court division of the General Court of Justice shall be final for the purpose of appeal. Prior to
19 taking any action to discharge and dismiss under this section the court shall make a finding that
20 the defendant has no record of previous convictions under the "North Carolina Controlled
21 Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A,
22 Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

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

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

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

40 For the purposes of determining whether the conviction is a first conviction or whether a
41 person has already had discharge and dismissal, no prior offense occurring more than seven
42 years before the date of the current offense shall be considered. In addition, convictions for
43 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
44 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

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

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

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

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

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

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

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

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

1 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
2 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
3 Investigation.

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

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

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

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

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

1 ~~possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under~~
2 ~~G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years~~
3 ~~of age at the time of the offense, that he has been of good behavior since his conviction, that he~~
4 ~~has successfully completed a drug education program approved for this purpose by the~~
5 ~~Department of Health and Human Services, and that he has not been convicted of a felony or~~
6 ~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or~~
7 ~~since the conviction for the offense in question, it shall enter an order of expunction of the~~
8 ~~petitioner's court record. The effect of such order shall be to restore the petitioner in the~~
9 ~~contemplation of the law to the status he occupied before arrest or indictment or information or~~
10 ~~conviction. No person as to whom such order was entered shall be held thereafter under any~~
11 ~~provision of any law to be guilty of perjury or otherwise giving a false statement by reason of~~
12 ~~his failures to recite or acknowledge such arrest, or indictment or information, or conviction, or~~
13 ~~trial in response to any inquiry made of him for any purpose. The judge may waive the~~
14 ~~condition that the petitioner attend the drug education school if the judge makes a specific~~
15 ~~finding that there was no drug education school within a reasonable distance of the defendant's~~
16 ~~residence or that there were specific extenuating circumstances which made it likely that the~~
17 ~~petitioner would not benefit from the program of instruction.~~

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

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

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

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

39 **"§ 90-113.14. Conditional discharge and expunction of records for first offenses.**

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

1 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall
2 discharge such person and dismiss the proceedings against him. Discharge and dismissal under
3 this section shall be without court adjudication of guilt and shall not be deemed a conviction for
4 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon
5 conviction of a crime including the additional penalties imposed for second or subsequent
6 convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once
7 with respect to any person. Disposition of a case to determine discharge and dismissal under
8 this section at the district court division of the General Court of Justice shall be final for the
9 purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court
10 shall make a finding that the defendant has no record of previous convictions under the "North
11 Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled
12 Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter
13 90.

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

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

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

31 For the purpose of determining whether the conviction is a first conviction or whether a
32 person has already had discharge and dismissal, no prior offense occurring more than seven
33 years before the date of the current offense shall be considered. In addition, convictions for
34 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
35 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

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

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

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

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

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

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

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

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

1 and the Administrative Office of the Court shall maintain a confidential file containing the
2 names of persons granted conditional discharges. The information contained in such file shall
3 be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of
4 ascertaining whether any person charged with an offense under Article 5 or 5A has been
5 previously granted a conditional discharge.

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

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

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

40 The judge to whom the petition is presented is authorized to call upon a probation officer
41 for additional investigation or verification of the petitioner's conduct since conviction. If the
42 court determines that the petitioner was convicted of a misdemeanor under this Article for
43 possessing a controlled substance included within Schedules II through VI of this Article, or for
44 possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of
45 age at the time of the offense, that he has been of good behavior since his conviction, that he
46 has successfully completed a drug education program approved for this purpose by the
47 Department of Health and Human Services, and that he has not been convicted of a felony or
48 misdemeanor other than a traffic violation under the laws of this State at any time prior to or
49 since the conviction for the misdemeanor in question, it shall enter an order of expunction of
50 the petitioner's court record. The effect of such order shall be to restore the petitioner in the
51 contemplation of the law to the status he occupied before such arrest or indictment or

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

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

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

25 **SECTION 7.** This act becomes effective December 1, 2009, and applies to
26 petitions for expunctions filed on or after that date.