

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1329
Committee Substitute Favorable 4/29/09
Committee Substitute #2 Favorable 5/11/09
Senate Judiciary I Committee Substitute Adopted 6/30/09
PROPOSED COMMITTEE SUBSTITUTE H1329-PCS11030-ST-76

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, TO MODIFY THE
4 AGE REQUIREMENTS OF CERTAIN EXPUNCTIONS TO BE THE AGE AT THE
5 TIME OF THE OFFENSE RATHER THAN THE AGE AT THE TIME OF
6 CONVICTION, TO ALLOW THE EXPUNCTION OF MISDEMEANOR LARCENY,
7 AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO THE
8 EXPUNCTION STATUTES.

9 The General Assembly of North Carolina enacts:

10 SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of**
13 **conviction of certain gang offenses.**

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

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



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

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

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

26 (b) If the court, after hearing, finds that (i) the petitioner was dismissed and the
27 proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had
28 not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of
29 good behavior and been free of conviction of any felony or misdemeanor other than a traffic
30 violation for two years from the date of conviction of the offense in question, the petitioner has
31 no outstanding restitution orders or civil judgments representing amounts ordered for restitution
32 entered against him, and the petitioner had not attained the age of 18 years at the time of the
33 offense in question, it shall order that such person be restored, in the contemplation of the law,
34 to the status occupied by the petitioner before such arrest or indictment or information. No
35 person as to whom such order has been entered shall be held thereafter under any provision of
36 any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's
37 failure to recite or acknowledge such arrest, or indictment or information, or trial, or response
38 to any inquiry made of the person for any purpose. The court shall also order that the said
39 conviction be expunged from the records of the court and direct all law enforcement agencies
40 bearing record of the same to expunge their records of the conviction as the result of a criminal
41 charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or
42 other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall
43 then transmit the copy of the order with a form supplied by the State Bureau of Investigation to
44 the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order
45 to the Federal Bureau of Investigation.

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

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

1 "§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the
2 time of the offense of certain drug offenses.

3 (a) Whenever a person is discharged, and the proceedings against the person dismissed,
4 pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the
5 offense, the person may apply to the court for an order to expunge from all official records
6 (other than the confidential file to be retained by the Administrative Office of the Courts under
7 G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of
8 guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the
9 application the following:

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

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

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

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

46 (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90
47 of the General Statutes by possessing a controlled substance included within Schedules II
48 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under
49 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of
50 the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other
51 adjudication of innocence, such person may apply to the court for an order to expunge from all

1 official records all recordation relating to his arrest, indictment or information, or trial. If the
2 court determines, after hearing, that such person was not over 21 years of age at the time the
3 offense for which the person was charged occurred, it shall enter such order. No person as to
4 whom such order has been entered shall be held thereafter under any provision of any law to be
5 guilty of perjury or otherwise giving a false statement by reason of his failures to recite or
6 acknowledge such arrest, or indictment or information, or trial in response to any inquiry made
7 of him for any purpose.

8 (c) Whenever any person who has not previously been convicted of an offense under
9 Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any
10 state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the
11 General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General
12 Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of
13 Chapter 90 of the General Statutes by possessing a controlled substance included within
14 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing
15 drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by
16 possessing less than one gram of cocaine, the court may, upon application of the person not
17 sooner than 12 months after conviction, order cancellation of the judgment of conviction and
18 expunction of the records of his arrest, indictment or information, trial, and conviction. A
19 conviction in which the judgment of conviction has been canceled and the records expunged
20 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
21 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
22 a crime, including the additional penalties imposed for second or subsequent convictions of
23 Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this
24 subsection may occur only once with respect to any person. Disposition of a case under this
25 subsection at the district court division of the General Court of Justice shall be final for the
26 purpose of appeal.

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

32 The judge to whom the petition is presented is authorized to call upon a probation officer
33 for additional investigation or verification of the petitioner's conduct since conviction. If the
34 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
35 Chapter 90 of the General Statutes for possessing a controlled substance included within
36 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
37 drug paraphernalia as prohibited in G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) for
38 possession of less than one gram of cocaine, that he was not over 21 years of age at the time of
39 the offense, that he has been of good behavior since his conviction, that he has successfully
40 completed a drug education program approved for this purpose by the Department of Health
41 and Human Services, and that he has not been convicted of a felony or misdemeanor other than
42 a traffic violation under the laws of this State at any time prior to or since the conviction for the
43 offense in question, it shall enter an order of expunction of the petitioner's court record. The
44 effect of such order shall be to restore the petitioner in the contemplation of the law to the
45 status he occupied before arrest or indictment or information or conviction. No person as to
46 whom such order was entered shall be held thereafter under any provision of any law to be
47 guilty of perjury or otherwise giving a false statement by reason of his failures to recite or
48 acknowledge such arrest, or indictment or information, or conviction, or trial in response to any
49 inquiry made of him for any purpose. The judge may waive the condition that the petitioner
50 attend the drug education school if the judge makes a specific finding that there was no drug
51 education school within a reasonable distance of the defendant's residence or that there were

1 specific extenuating circumstances which made it likely that the petitioner would not benefit
2 from the program of instruction.

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

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

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

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

26 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
27 **time of the offense of certain toxic vapors offenses.**

28 (a) Whenever a person is discharged and the proceedings against the person dismissed
29 under G.S. 90-113.14(a) or (a1), such person, if he was not over 21 years of age at the time of
30 the offense, may apply to the court for an order to expunge from all official records (other than
31 the confidential file to be retained by the Administrative Office of the Courts under
32 G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding
33 of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the
34 application the following:

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

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

44 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
45 and sheriff of the county in which the petitioner was convicted, and, if
46 different, the county of which the petitioner is a resident, showing that the
47 applicant has not been convicted of a felony or misdemeanor other than a
48 traffic violation under the laws of this State at any time prior to the
49 conviction for the misdemeanor in question or during the period of probation
50 following the decision to defer further proceedings on the misdemeanor in
51 question.

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

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

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

20 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter
21 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22,
22 upon dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon
23 a finding of not guilty or other adjudication of innocence, such person may apply to the court
24 for an order to expunge from all official records all recordation relating to his arrest, indictment
25 or information, and trial. If the court determines, after hearing that such person was not over 21
26 years of age at the time the offense for which the person was charged occurred, it shall enter
27 such order. No person as to whom such order has been entered shall be held thereafter under
28 any provision of any law to be guilty of perjury or otherwise giving a false statement by reason
29 of his failures to recite or acknowledge such arrest, or indictment or information, or trial in
30 response to any inquiry made of him for any purpose.

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

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

1 The judge to whom the petition is presented is authorized to call upon a probation officer
2 for additional investigation or verification of the petitioner's conduct since conviction. If the
3 court determines that the petitioner was convicted of a misdemeanor under Article 5A of
4 Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by
5 G.S. 90-113.22, that he was not over 21 years of age at the time of the offense, that he has been
6 of good behavior since his conviction, that he has successfully completed a drug education
7 program approved for this purpose by the Department of Health and Human Services, and that
8 he has not been convicted of a felony or misdemeanor other than a traffic violation under the
9 laws of this State at any time prior to or since the conviction for the misdemeanor in question, it
10 shall enter an order of expunction of the petitioner's court record. The effect of such order shall
11 be to restore the petitioner in the contemplation of the law to the status he occupied before such
12 arrest or indictment or information or conviction. No person as to whom such order was entered
13 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise
14 giving a false statement by reason of his failures to recite or acknowledge such arrest, or
15 indictment or information, or conviction, or trial in response to any inquiry made of him for any
16 purpose. The judge may waive the condition that the petitioner attend the drug education school
17 if the judge makes a specific finding that there was no drug education school within a
18 reasonable distance of the defendant's residence or that there were specific extenuating
19 circumstances which made it likely that the petitioner would not benefit from the program of
20 instruction.

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

28 The clerk of superior court in each county in North Carolina shall, as soon as practicable
29 after each term of court in his county, file with the Administrative Office of the Courts the
30 names of those persons whose judgments of convictions have been cancelled and expunged
31 under the provisions of this subsection, and the Administrative Office of the Courts shall
32 maintain a confidential file containing the names of persons whose judgments of convictions
33 have been cancelled and expunged. The information contained in the file shall be disclosed
34 only to judges of the General Court of Justice of North Carolina for the purpose of ascertaining
35 whether any person charged with an offense under Article 5A of Chapter 90 of the General
36 Statutes has been previously granted cancellation and expunction of a judgment of conviction
37 pursuant to the terms of this subsection."

38 **SECTION 4.** G.S. 14-50.29 reads as rewritten:

39 **"§ 14-50.29. Conditional discharge for first offenders under the age of 18.**

40 (a) Whenever any person who ~~has not yet attained the age of 18 years, and~~ has not
41 previously been convicted of any felony or misdemeanor other than a traffic violation under the
42 laws of the United States or the laws of this State or any other state, pleads guilty to or is guilty
43 of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, and
44 the offense was committed before the person attained the age of 18 years, the court may,
45 without entering a judgment of guilt and with the consent of the defendant, defer further
46 proceedings and place the defendant on probation upon such reasonable terms and conditions
47 as the court may require.

48 (b) If the court, in its discretion, defers proceedings pursuant to this section, it shall
49 place the defendant on supervised probation for not less than one year, in addition to any other
50 conditions. Prior to taking any action to discharge and dismiss under this section, the court shall
51 make a finding that the defendant has no previous criminal convictions. Upon fulfillment of the

1 terms and conditions of the probation provided for in this section, the court shall discharge the
2 defendant and dismiss the proceedings against the defendant.

3 (c) Discharge and dismissal under this section shall be without court adjudication of
4 guilt and shall not be deemed a conviction for purposes of this section or for purposes of
5 disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and
6 dismissal under this section may occur only once with respect to any person. Disposition of a
7 case to determine discharge and dismissal under this section at the district court division of the
8 General Court of Justice shall be final for the purpose of appeal. Upon violation of a term or
9 condition of the probation provided for in this section, the court may enter an adjudication of
10 guilt and proceed as otherwise provided.

11 (d) Upon discharge and dismissal pursuant to this section, the person may apply for an
12 order to expunge the complete record of the proceedings resulting in the dismissal and
13 discharge, pursuant to the procedures and requirements set forth in
14 ~~G.S. 14-50.30(a), G.S. 15A-145.1. If the court determines, after hearing, that such person was~~
15 ~~dismissed and the proceedings against the person discharged and that the person had not yet~~
16 ~~attained 18 years of age at the time of the offense, it shall enter such order. The effect of such~~
17 ~~order shall be to restore such person in the contemplation of the law to the status the person~~
18 ~~occupied before such arrest or indictment or information.~~

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

27 **SECTION 5.** G.S. 14-50.30 reads as rewritten:

28 **"§ 14-50.30. Expunction of records.**

29 ~~(a) Whenever any Any person who has not yet attained the age of 18 years and has not~~
30 ~~previously been convicted of any felony or misdemeanor other than a traffic violation under the~~
31 ~~laws of the United States or the laws of this State or any other state, may, if the offense was~~
32 ~~committed before the person attained the age of 18 years, be eligible to apply for expunction of~~
33 ~~certain offenses under this Article pursuant to G.S. 15A-145.1. pleads guilty to or is guilty of (i)~~
34 ~~a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person~~
35 ~~may file a petition in the court where the person was convicted for expunction of the offense~~
36 ~~from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and~~
37 ~~dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction~~
38 ~~or (ii) the completion of any period of probation, whichever occurs later. The petition shall~~
39 ~~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 6.** 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~~, G.S. 90-113.22, or (ii) a felony
51 under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without

1 entering a judgment of guilt and with the consent of such person, defer further proceedings and
2 place him on probation upon such reasonable terms and conditions as it may require.
3 Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may
4 be imposed under this section for an offense under this Article for which the prescribed
5 punishment includes only a fine. To fulfill the terms and conditions of probation the court may
6 allow the defendant to participate in a drug education program approved for this purpose by the
7 Department of Health and Human Services. Upon violation of a term or condition, the court
8 may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the
9 terms and conditions, the court shall discharge such person and dismiss the proceedings against
10 him. Discharge and dismissal under this section shall be without court adjudication of guilt and
11 shall not be deemed a conviction for purposes of this section or for purposes of
12 disqualifications or disabilities imposed by law upon conviction of a crime including the
13 additional penalties imposed for second or subsequent convictions under this Article. Discharge
14 and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any
15 person. Disposition of a case to determine discharge and dismissal under this section at the
16 district court division of the General Court of Justice shall be final for the purpose of appeal.
17 Prior to taking any action to discharge and dismiss under this section the court shall make a
18 finding that the defendant has no record of previous convictions under the "North Carolina
19 Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act",
20 Article 5A, 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~~G.S. 90-113.22 and subject to the provisions of this subsection (a1), the court
23 may place defendant on probation under this section for an offense under this Article including
24 an offense for which the prescribed punishment includes only a fine. The probation, if imposed,
25 shall be for not less than one year and shall contain a minimum condition that the defendant
26 who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of
27 the date of the imposition of said probation, the program of instruction at the drug education
28 school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01.
29 The 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 Upon fulfillment of the terms and conditions of the probation, the court shall discharge such
39 person and dismiss the proceedings against the person.

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~~90-113.22 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 pursuant to this subsection and deny
47 application for expunction of all recordation of defendant's arrest, indictment, or information,
48 trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.2. For
49 purposes of this subsection, the phrase "failure to complete successfully the prescribed program
50 of instruction at a drug education school" includes failure to attend scheduled classes without a
51 valid excuse, failure to complete the course within 150 days of imposition of probation, willful

1 failure to pay the required fee for the ~~course,~~ course as provided in G.S. 90-96.01(b), or any
2 other manner in which the person fails to complete the course successfully. The instructor of
3 the course to which a person is assigned shall report any failure of a person to complete
4 successfully the program of instruction to the court which imposed probation. Upon receipt of
5 the instructor's report that the person failed to complete the program successfully, the court
6 shall revoke ~~probation and/or probation,~~ shall not discharge such person, shall not dismiss the
7 proceedings against the person, and shall deny application for expunction of all recordation of
8 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and
9 discharge pursuant to ~~this section.~~ G.S. 15A-145.2. A person may obtain a hearing before the
10 court of original jurisdiction prior to revocation of probation or denial of application for
11 expunction.

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

14 (b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the
15 proceedings against him under subsection (a) or (a1) of this section, such person, if he were not
16 over 21 years of age at the time of the offense, may be eligible to apply for expunction of
17 certain records relating to the offense pursuant to G.S. 15A-145.2(a). ~~may apply to the court for~~
18 ~~an order to expunge from all official records (other than the confidential file to be retained by~~
19 ~~the Administrative Office of the Courts under subsection (c)) all recordation relating to his~~
20 ~~arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant~~
21 ~~to this section. The applicant shall attach to the application the following:~~

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

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

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

50 ~~The court shall also order that said conviction and the records relating thereto be expunged~~
51 ~~from the records of the court, and direct all law enforcement agencies bearing records of the~~

1 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
2 order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,
3 chief of police or other arresting agency, as appropriate, shall forward such order to the State
4 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
5 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
6 Investigation.

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

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

28 (e) Whenever any person who has not previously been convicted of an offense under
29 this Article or under any statute of the United States or any state relating to controlled
30 substances included in any schedule of this Article or to that paraphernalia included in Article
31 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a
32 misdemeanor under this Article by possessing a controlled substance included within Schedules
33 II through VI of this Article, or by possessing drug paraphernalia as prohibited by
34 G.S. 90-113.21, G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than
35 one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and
36 expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c), the court
37 may, upon application of the person not sooner than 12 months after conviction, order
38 cancellation of the judgment of conviction and expunction of the records of his arrest,
39 indictment, or information, trial and conviction. A conviction in which the judgment of
40 conviction has been canceled and the records expunged pursuant to this section shall not be
41 thereafter deemed a conviction for purposes of this section or for purposes of disqualifications
42 or liabilities imposed by law upon conviction of a crime including the additional penalties
43 imposed for second or subsequent convictions of this Article. Cancellation and expunction
44 under this section may occur only once with respect to any person. Disposition of a case under
45 this section at the district court division of the General Court of Justice shall be final for the
46 purpose of appeal.

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

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

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

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

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

42 **SECTION 7.** G.S. 90-113.14 reads as rewritten:

43 **"§ 90-113.14. Conditional discharge and expunction of records for first offenses.**

44 (a) Whenever any person who has not previously been convicted of any offense under
45 this Article or under any statute of the United States or any state relating to those substances
46 included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or
47 possessing any substance having the property of releasing toxic vapors or fumes in violation of
48 Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the
49 consent of such person, defer further proceedings and place him on probation upon such
50 reasonable terms and conditions as it may require. Notwithstanding the provisions of
51 G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for

1 an offense under this Article for which the prescribed punishment includes only a fine. To
2 fulfill the terms and conditions of probation the court may allow the defendant to participate in
3 a drug education program approved for this purpose by the Department of Health and Human
4 Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and
5 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall
6 discharge such person and dismiss the proceedings against him. Discharge and dismissal under
7 this section shall be without court adjudication of guilt and shall not be deemed a conviction for
8 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon
9 conviction of a crime including the additional penalties imposed for second or subsequent
10 convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once
11 with respect to any person. Disposition of a case to determine discharge and dismissal under
12 this section at the district court division of the General Court of Justice shall be final for the
13 purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court
14 shall make a finding that the defendant has no record of previous convictions under the "North
15 Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled
16 Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter
17 90.

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

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

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

35 Upon fulfillment of the terms and conditions of the probation, the court shall discharge such
36 person and dismiss the proceedings against the person.

37 For the purpose of determining whether the conviction is a first conviction or whether a
38 person has already had discharge and dismissal, no prior offense occurring more than seven
39 years before the date of the current offense shall be considered. In addition, convictions for
40 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
41 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

42 Failure to complete successfully an approved program of instruction at a drug education
43 school shall constitute grounds to revoke probation pursuant to this subsection and deny
44 application for expunction of all recordation of defendant's arrest, indictment, or information,
45 trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.3. For
46 purposes of this subsection, the phrase "failure to complete successfully the prescribed program
47 of instruction at a drug education school" includes failure to attend scheduled classes without a
48 valid excuse, failure to complete the course within 150 days of imposition of probation, willful
49 failure to pay the required fee for the ~~course~~ course as provided in G.S. 90-96.01(b), or any
50 other manner in which the person fails to complete the course successfully. The instructor of
51 the course to which a person is assigned shall report any failure of a person to complete

1 successfully the program of instruction to the court which imposed probation. Upon receipt of
2 the instructor's report that the person failed to complete the program successfully, the court
3 shall revoke ~~probation and/or probation~~, shall not discharge such person, shall not dismiss the
4 proceedings against the person, and shall deny application for expunction of all recordation of
5 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and
6 discharge pursuant to ~~this section~~. G.S. 15A-145.3. A person may obtain a hearing before the
7 court of original jurisdiction prior to revocation of probation or denial of application for
8 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 of such person, and discharge of the proceedings against him
12 under subsection (a) or (a1) of this section, such person, if he were not over 21 years of age at
13 the time of the offense, may be eligible to apply for expunction of certain records relating to the
14 offense pursuant to G.S. 15A-145.3(a). ~~may apply to the court for an order to expunge from all~~
15 ~~official records (other than the confidential file to be retained by the Administrative Office of~~
16 ~~the Courts under subsection (c)) all recordation relating to his arrest, indictment or information,~~
17 ~~trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall~~
18 ~~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 ~~misdemeanor 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 misdemeanor in question or during the period of probation~~
34 ~~following the decision to defer further proceedings on the misdemeanor 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 Commission, the names of all
6 persons convicted under such Articles, together with the offense or offenses of which such
7 persons were convicted. The clerk shall also file with the Administrative Office of the Courts
8 the names of those persons granted a conditional discharge under the provisions of this Article,
9 and the Administrative Office of the Court shall maintain a confidential file containing the
10 names of persons granted conditional discharges. The information contained in such file shall
11 be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of
12 ascertaining whether any person charged with an offense under Article 5 or 5A has been
13 previously granted a conditional discharge.

14 (d) Whenever any person is charged with a misdemeanor under this Article by
15 ~~possessing a controlled substance included within Schedules II through VI of this Article, or by~~
16 ~~or possessing drug paraphernalia as prohibited by G.S. 90-113.21~~G.S. 90-113.22 upon
17 dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a
18 finding of not guilty or other adjudication of innocence, the person may be eligible to apply for
19 expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person~~
20 ~~may apply to the court for an order to expunge from all official records all recordation relating~~
21 ~~to his arrest, indictment, or information, and trial. If the court determines, after hearing that~~
22 ~~such person was not over 21 years of age at the time any of the proceedings against him~~
23 ~~occurred, it shall enter such order. No person as to whom such order has been entered shall be~~
24 ~~held thereafter under any provision of any law to be guilty of perjury or otherwise giving a~~
25 ~~false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or~~
26 ~~information, or trial in response to any inquiry made of him for any purpose.~~

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

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

49 The judge to whom the petition is presented is authorized to call upon a probation officer
50 for additional investigation or verification of the petitioner's conduct since conviction. If the
51 court determines that the petitioner was convicted of a misdemeanor under this Article for

1 possessing a controlled substance included within Schedules II through VI of this Article, or for
2 possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of
3 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 misdemeanor in question, it shall enter an order of expunction of
8 the 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 such arrest or indictment or
10 information or conviction. No person as to whom such order was entered shall be held
11 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false
12 statement by reason of his failures to recite or acknowledge such arrest, or indictment or
13 information, or conviction, or trial in response to any inquiry made of him for any purpose. The
14 judge may waive the condition that the petitioner attend the drug education school if the judge
15 makes a specific finding that there was no drug education school within a reasonable distance
16 of the defendant's residence or that there were specific extenuating circumstances which made
17 it likely that the 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 cancelled 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 cancelled 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 **SECTION 8.** G.S. 15A-146(a) reads as rewritten:

35 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or was
36 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
37 dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the
38 court of the county where the charge was brought for an order to expunge from all official
39 records any entries relating to his apprehension or trial. The court shall hold a hearing on the
40 application and, upon finding that the person had not previously received an expungement
41 under this section, G.S. 15A-145, or ~~G.S. 90-96~~, G.S. 15A-145.1, 15A-145.2, or 15A-145.3, and
42 that the person had not previously been convicted of any felony under the laws of the United
43 States, this State, or any other state, the court shall order the expunction. No person as to whom
44 such an order has been entered shall be held thereafter under any provision of any law to be
45 guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry
46 made for any purpose, by reason of his failure to recite or acknowledge any expunged entries
47 concerning apprehension or trial."

48 **SECTION 9.** G.S. 15A-146(a1) reads as rewritten:

49 "(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
50 offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,
51 then a person may apply to have each of those charges expunged if the offenses occurred within

1 the same 12-month period of time or if the charges are dismissed or findings are made at the
2 same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court"
3 shall mean one week for superior court and one day for district court. There is no requirement
4 that the multiple offenses arise out of the same transaction or occurrence or that the multiple
5 offenses were consolidated for judgment. The court shall hold a hearing on the application. If
6 the court finds that the person had not previously received an expungement under this
7 subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or~~
8 ~~G.S. 90-96,~~G.S. 15A-145, 15A-145.1, 15A-145.2, or 15A-145.3, and that the person had not
9 previously been convicted of any felony under the laws of the United States, this State, or any
10 other state, the court shall order the expunction. No person as to whom such an order has been
11 entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be
12 guilty of otherwise giving a false statement or response to any inquiry made for any purpose,
13 by reason of his failure to recite or acknowledge any expunged entries concerning apprehension
14 or trial."

15 **SECTION 10.** G.S. 15A-145 reads as rewritten:

16 **"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of**
17 **conviction of misdemeanor; expunction of certain other misdemeanors.**

18 (a) Whenever any person who ~~has (i) not yet attained the age of 18 years and~~ has not
19 previously been convicted of any felony, or misdemeanor other than a traffic violation, under
20 the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is
21 guilty of a misdemeanor other than a traffic violation, and the offense was committed before
22 the person attained the age of 18 years, or (ii) not yet attained the age of 21 years and has not
23 ~~previously been convicted of any felony, or misdemeanor other than a traffic violation, under~~
24 ~~the laws of the United States, the laws of this State or any other state,~~(ii) pleads guilty to or is
25 guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense
26 was committed before the person attained the age of 21 years, he may file a petition in the court
27 where he was convicted for expunction of the misdemeanor from his criminal record. The
28 petition cannot be filed earlier than: (i) two years after the date of the conviction, or (ii) the
29 completion of any period of probation, whichever occurs later, and the petition shall contain,
30 but not be limited to, the following:

- 31 (1) An affidavit by the petitioner that he has been of good behavior for the
32 two-year period since the date of conviction of the misdemeanor in question
33 and has not been convicted of any felony, or misdemeanor other than a
34 traffic violation, under the laws of the United States or the laws of this State
35 or any other state.
- 36 (2) Verified affidavits of two persons who are not related to the petitioner or to
37 each other by blood or marriage, that they know the character and reputation
38 of the petitioner in the community in which he lives and that his character
39 and reputation are good.
- 40 (3) A statement that the petition is a motion in the cause in the case wherein the
41 petitioner was convicted.
- 42 (4) Affidavits of the clerk of superior court, chief of police, where appropriate,
43 and sheriff of the county in which the petitioner was convicted and, if
44 different, the county of which the petitioner is a resident, showing that the
45 petitioner has not been convicted of a felony or misdemeanor other than a
46 traffic violation under the laws of this State at any time prior to the
47 conviction for the misdemeanor in question or during the two-year period
48 following that conviction.
- 49 (5) An affidavit by the petitioner that no restitution orders or civil judgments
50 representing amounts ordered for restitution entered against him are
51 outstanding.

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

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

7 (b) If the court, after hearing, finds that the petitioner had remained of good behavior
8 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
9 years from the date of conviction of the misdemeanor in question, the petitioner has no
10 outstanding restitution orders or civil judgments representing amounts ordered for restitution
11 entered against him, and (i) petitioner was not 18 years old at the time of the ~~conviction~~offense
12 in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction~~offense
13 of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be
14 restored, in the contemplation of the law, to the status he occupied before such arrest or
15 indictment or information. No person as to whom such order has been entered shall be held
16 thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false
17 statement by reason of his failure to recite or acknowledge such arrest, or indictment,
18 information, or trial, or response to any inquiry made of him for any purpose.

19 (c) The court shall also order that the said misdemeanor conviction, or a civil
20 revocation of a drivers license as the result of a criminal charge, be expunged from the records
21 of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles,
22 bearing record of the same to expunge their records of the conviction or a civil revocation of a
23 drivers license as the result of a criminal charge. This subsection does not apply to civil or
24 criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.
25 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other
26 arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor
27 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is
28 also expunged. The civil revocation of a drivers license shall not be expunged prior to a final
29 disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff,
30 chief or head of such other arresting agency shall then transmit the copy of the order with a
31 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the
32 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

33 (d) The clerk of superior court in each county in North Carolina shall, as soon as
34 practicable after each term of court in his county, file with the Administrative Office of the
35 Courts, the names of those persons granted a discharge under the provisions of this section, and
36 the Administrative Office of the Courts shall maintain a confidential file containing the names
37 of persons granted conditional discharges. The information contained in such file shall be
38 disclosed only to judges of the General Court of Justice of North Carolina for the purpose of
39 ascertaining whether any person charged with an offense has been previously granted a
40 discharge.

41 (d1) Notwithstanding subsection (a) of this section and any other provision of law, a
42 person may file a petition in the court where the person was convicted for expunction of a
43 misdemeanor conviction from the person's criminal record if the person was convicted for
44 misdemeanor larceny pursuant to G.S. 14-72(a) more than 10 years prior to the filing of the
45 petition.

46 The petition shall contain, but not be limited to, the following:

- 47 (1) An affidavit by the petitioner that he has been of good behavior for the
48 10-year period preceding the filing of the petition, and has not been
49 convicted of any felony, or misdemeanor other than a traffic violation, under
50 the laws of the United States or the laws of this State or any other state
51 during the 10-year period.

- 1 (2) Verified affidavits of two persons who are not related to the petitioner or to
2 each other by blood or marriage, that they know the character and reputation
3 of the petitioner in the community in which he lives and that his character
4 and reputation are good.
- 5 (3) A statement that the petition is a motion in the cause in the case wherein the
6 petitioner was convicted.
- 7 (4) 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 petitioner has not been convicted of a felony or misdemeanor other than a
11 traffic violation under the laws of this State during the 10-year period
12 preceding the filing of the petition.
- 13 (5) An affidavit by the petitioner that no restitution orders or civil judgments
14 representing amounts ordered for restitution entered against him are
15 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 10-year
21 period that he deems desirable.

22 If the court, after hearing, finds that the petitioner had remained of good behavior and been
23 free on conviction of any felony or misdemeanor, other than a traffic violation, during the 10-
24 year period preceding the petition, the petitioner has no outstanding restitution orders or civil
25 judgments representing amounts ordered for restitution entered against him, and the petitioner
26 was convicted of misdemeanor larceny pursuant to G.S. 14-72(a) more than 10 years prior to
27 the filing of the petition, it shall order that such person be restored, in the contemplation of the
28 law, to the status he occupied before such arrest or indictment or information. No person as to
29 whom such order has been entered shall be held thereafter under any provision of any laws to
30 be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or
31 acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made
32 of him for any purpose.

33 The provisions of subsections (c), (d), and (e) of this section shall apply to a petition for
34 expunction filed or granted pursuant to this subsection.

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

39 **SECTION 11.** This act becomes effective December 1, 2009, and applies to
40 petitions for expunctions filed on or after that date.