

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

S

D

SENATE BILL 262
Judiciary II Committee Substitute Adopted 3/30/09
Finance Committee Substitute Adopted 5/12/09
PROPOSED HOUSE COMMITTEE SUBSTITUTE S262-PCS85261-TC-54

Short Title: Expunctions/Purge Online Databases.

(Public)

Sponsors:

Referred to:

February 23, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD
3 SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE
4 STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE
5 GOVERNMENT AGENCY TO FORWARD NOTICE OF EXPUNCTION ORDERS
6 RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES
7 CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY
8 THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD
9 DATABASE, TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES
10 CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE
11 THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO CIVIL
12 LIABILITY.

13 The General Assembly of North Carolina enacts:

14 **SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended by
15 adding the following new sections to read:

16 **"§ 15A-150. Notification requirements.**

17 (a) Notification to AOC. – The clerk of superior court in each county in North Carolina
18 shall, as soon as practicable after each term of court, file with the Administrative Office of the
19 Courts the names of the following:

- 20 (1) Persons granted a discharge or an expunction under this Article.
21 (2) Persons granted an expunction under G.S. 14-50.29 or G.S. 14-50.30.
22 (3) Persons granted a conditional discharge or an expunction under G.S. 90-96
23 or G.S. 90-113.14.
24 (4) Persons whose judgments of convictions have been canceled and expunged
25 under G.S. 90-96 or G.S. 90-113.14.

26 (b) Notification to Other State and Local Agencies. – The clerk of superior court in
27 each county in North Carolina shall send a certified copy of an order granting an expunction to
28 a person named in subsection (a) of this section to all of the agencies listed in this subsection.
29 An agency receiving an order under this subsection shall expunge from its records all entries
30 made as a result of the charge or conviction ordered expunged.

- 31 (1) The sheriff, chief of police, or other arresting agency.



* S 2 6 2 - P C S 8 5 2 6 1 - T C - 5 4 *

1 (2) When applicable, the Division of Motor Vehicles and the Department of
2 Correction.

3 (3) Any State or local agency identified by the petition as bearing record of the
4 offense that has been expunged.

5 (c) Notification to SBI and FBI. – An arresting agency that receives a certified copy of
6 an order under this section shall forward a copy of the order with the form supplied by the State
7 Bureau of Investigation to the State Bureau of Investigation. The State Bureau of Investigation
8 shall forward the order to the Federal Bureau of Investigation.

9 (d) Notification to Private Entities. – A State agency that receives a certified copy of an
10 order under this section shall notify any private entity with which it has a licensing agreement
11 for bulk extracts of data from the agency criminal record database to delete the record in
12 question. The private entity shall notify any other entity to which it subsequently provides in a
13 bulk extract data from the agency criminal database to delete the record in question from its
14 database.

15 **"§ 15A-151. AOC maintain confidential file.**

16 The Administrative Office of the Courts shall maintain a confidential file containing the
17 names of those people for whom it received a notice under G.S. 15A-150. The information
18 contained in the file may be disclosed only as follows:

19 (1) To a judge of the General Court of Justice of North Carolina for the purpose
20 of ascertaining whether a person charged with an offense has been
21 previously granted a discharge or an expunction.

22 (2) To a person requesting confirmation of the person's own discharge or
23 expunction, as provided in G.S. 15A-152.

24 (3) To the General Court of Justice of North Carolina in response to a subpoena
25 or other court order issued pursuant to a civil action under G.S. 15A-152.

26 **"§ 15A-152. Civil liability for dissemination of certain criminal history information.**

27 (a) Duty to Delete Record. – A private entity that compiles and disseminates for
28 compensation criminal history record information shall destroy and may not disseminate any
29 information in the possession of the entity with respect to which the entity has received a notice
30 to delete the record in question.

31 (b) Dissemination of Information. – Unless the entity is regulated by the federal Fair
32 Credit Reporting, Act 15 U.S.C. § 1681, et seq. or the Gramm-Leach-Bliley Act 15 U.S.C. §§
33 6801-6809, a private entity described by subsection (a) of this section that is licensed to access
34 a State agency's criminal history record database may disseminate that information only if,
35 within the 90-day period preceding the date of dissemination, the entity originally obtained the
36 information or received the information as an updated record information to its database. The
37 private entity must notify the State agency from which it receives the information of any other
38 entity to which it subsequently provides a bulk extract of the information.

39 (c) Civil Liability. – A private entity that disseminates information in violation of this
40 section is liable for any damages that are sustained as a result of the violation by the person
41 who is the subject of that information. A person who prevails in an action brought under this
42 section is also entitled to recover court costs and reasonable attorneys' fees. This subsection
43 does not apply to an entity regulated by and subject to the civil liability remedies of the federal
44 Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq., or the Gramm Leach-Bliley Act, 15
45 U.S.C. 6801-6809, et seq.

46 (d) Certificate of Verification. – Prior to filing an action under this section, a person
47 who is the subject of a record that has been expunged may apply to the Administrative Office
48 of the Courts for a certificate verifying that the person is the subject of a record that has been
49 expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The
50 application must include a sworn affidavit attesting, under penalty of perjury, that the applicant
51 is the person who was the subject of the record in question and identifying the specific case

1 expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant
2 affidavit under this subsection may not disclose the nature of content of the application, except
3 as required in a court action related to the application. Unless made part of the record of a
4 subsequent court proceeding, a certificate of verification and an application for the certificate
5 are not public records under G.S. 132-1. The Administrative Office of the Courts may establish
6 procedures pertaining to the application for and issuance of certificates of verification."

7 **SECTION 2.** G.S. 14-50.29(e) reads as rewritten:

8 ~~"(e) The clerk of superior court in each county in North Carolina shall, as soon as~~
9 ~~practicable after each term of court in his county, file with the Administrative Office of the~~
10 ~~Courts the names of those persons granted a discharge under the provisions of this section, and~~
11 ~~the Administrative Office of the Courts shall maintain a confidential file containing the names~~
12 ~~of persons granted conditional discharges. The information contained in such file shall be~~
13 ~~disclosed only to judges of the General Court of Justice of North Carolina for the purpose of~~
14 ~~ascertaining whether any person charged with an offense has been previously granted a~~
15 ~~discharge; shall notify State and local agencies of the court's order as provided in~~
16 G.S. 15A-150."

17 **SECTION 3.** G.S. 14-50.30(b) reads as rewritten:

18 "(b) If the court, after hearing, finds that the petitioner has remained of good behavior
19 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
20 years from the date of conviction of the offense in question, the petitioner has no outstanding
21 restitution orders or civil judgments representing amounts ordered for restitution entered
22 against him, and the petitioner had not attained the age of 18 years at the time of the conviction
23 in question, it shall order that such person be restored, in the contemplation of the law, to the
24 status occupied by the petitioner before such arrest or indictment or ~~information.~~ information
25 and that the conviction be expunged from the records of the court. No person as to whom such
26 order has been entered shall be held thereafter under any provision of any laws to be guilty of
27 perjury or otherwise giving a false statement by reason of the person's failure to recite or
28 acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made
29 of the person for any purpose. The court shall also ~~order that the said conviction be expunged~~
30 ~~from the records of the court, and direct all law enforcement agencies~~ agencies, the Department
31 of Correction, the Division of Motor Vehicles, and any other State or local government
32 agencies identified by the petitioner as bearing record of the same conviction to expunge their
33 records of the petitioner's conviction as the result of a criminal charge. The clerk ~~shall forward~~
34 ~~a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,~~
35 ~~chief, or head of such other arresting agency shall then transmit the copy of the order with a~~
36 ~~form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the~~
37 ~~State Bureau of Investigation shall forward the order to the Federal Bureau of~~
38 ~~Investigation.~~ shall notify State and local agencies of the court's order as provided in
39 G.S. 15A-150."

40 **SECTION 4.(a)** G.S. 15A-145(c) reads as rewritten:

41 "(c) The court shall also order that the ~~said~~ ~~misdemeanor conviction, or a civil~~
42 ~~revocation of a drivers license as the result of a criminal charge, be expunged from the records~~
43 ~~of the court, and court. The court shall direct all law-enforcement agencies, the Department of~~
44 ~~Correction, including the Division of Motor Vehicles, and any other State or local government~~
45 ~~agencies identified by the petitioner as bearing record of the same to expunge their records of~~
46 ~~the petitioner's conviction or a civil revocation of a drivers license as the result of a criminal~~
47 ~~charge. This subsection does not apply to civil or criminal charges based upon the civil~~
48 ~~revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy~~
49 ~~of the order to the sheriff, chief of police, or other arresting agency.~~ shall notify State and local
50 agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified
51 copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation

1 provided the underlying criminal charge is also expunged. The civil revocation of a drivers
2 license shall not be expunged prior to a final disposition of any pending civil or criminal charge
3 based upon the civil revocation. ~~The sheriff, chief or head of such other arresting agency shall~~
4 ~~then transmit the copy of the order with a form supplied by the State Bureau of Investigation to~~
5 ~~the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order~~
6 ~~to the Federal Bureau of Investigation."~~

7 **SECTION 4.(b)** G.S. 15A-145(d) reads as rewritten:

8 "(d) ~~The clerk of superior court in each county in North Carolina shall, as soon as~~
9 ~~practicable after each term of court in his county, file with the Administrative Office of the~~
10 ~~Courts, the names of those persons granted a discharge under the provisions of this section, and~~
11 ~~the Administrative Office of the Courts shall maintain a confidential file containing the names~~
12 ~~of persons granted conditional discharges. The information contained in such file shall be~~
13 ~~disclosed only to judges of the General Court of Justice of North Carolina for the purpose of~~
14 ~~ascertaining whether any person charged with an offense has been previously granted a~~
15 ~~discharge.~~ shall notify State and local agencies of the court's order as provided in
16 G.S. 15A-150."

17 **SECTION 5.(a)** G.S. 15A-146(b) reads as rewritten:

18 "(b) The court may also order that the said entries, including civil revocations of drivers
19 licenses as a result of the underlying charge, shall be expunged from the records of the court,
20 and direct all law-enforcement agencies, the Department of Correction, including the Division
21 of Motor Vehicles, and any other State or local government agencies identified by the
22 petitioner as bearing record of the same to expunge their records of the entries, including civil
23 revocations of drivers licenses as a result of the underlying charge being expunged. This
24 subsection does not apply to civil or criminal charges based upon the civil revocation, or to
25 civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the
26 sheriff, chief of police, or other arresting agency. shall notify State and local agencies of the
27 court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order
28 to the Division of Motor Vehicles for the expunction of a civil revocation provided the
29 underlying criminal charge is also expunged. The civil revocation of a drivers license shall not
30 be expunged prior to a final disposition of any pending civil or criminal charge based upon the
31 civil revocation. ~~The sheriff, chief or head of such other arresting agency shall then transmit the~~
32 ~~copy of the order with the form supplied by the State Bureau of Investigation to the State~~
33 ~~Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the~~
34 ~~Federal Bureau of Investigation. The costs of expunging these records~~ the records, as required
35 under G.S. 15A-150, shall not be taxed against the petitioner."

36 **SECTION 5.(b)** G.S. 15A-146(c) reads as rewritten:

37 "(c) ~~The Clerk of Superior Court in each county in North Carolina shall, as soon as~~
38 ~~practicable after each term of court in his county, file with the Administrative Office of the~~
39 ~~Courts, the names of those persons granted an expungement under the provisions of this section~~
40 ~~and the Administrative Office of the Courts shall maintain a confidential file containing the~~
41 ~~names of persons granted such expungement. The information contained in such files shall be~~
42 ~~disclosed only to judges of the General Court of Justice of North Carolina for the purpose of~~
43 ~~ascertaining whether any person charged with an offense has been previously granted an~~
44 ~~expungement.~~ clerk shall notify State and local agencies of the court's order as provided in
45 G.S. 15A-150."

46 **SECTION 6.** G.S. 15A-147 reads as rewritten:

47 **"§ 15A-147. Expunction of records when charges are dismissed or there are findings of**
48 **not guilty as a result of identity theft.**

49 (a) If any person is named in a charge for an infraction or a crime, either a
50 misdemeanor or a felony, as a result of another person using the identifying information of the
51 named person and the charge against the named person is dismissed, a finding of not guilty is

1 entered, or the conviction is set aside, the named person may apply by petition or written
2 motion to the court where the charge was last pending on a form approved by the
3 Administrative Office of the Courts supplied by the clerk of court for an order to expunge from
4 all official records any entries relating to the person's apprehension, charge, or trial. The court,
5 after notice to the district attorney, shall hold a hearing on the motion or petition and, upon
6 finding that the person's identity was used without permission and the charges were dismissed
7 or the person was found not guilty, the court shall order the expunction.

8 (b) No person as to whom such an order has been entered under this section shall be
9 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
10 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
11 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
12 charge, or trial.

13 (c) The court shall also order that the said entries shall be expunged from the records of
14 the court and direct all law enforcement agencies, the Department of Correction, the Division
15 of Motor Vehicles, or any other State or local government agencies identified by the petitioner
16 as bearing record of the same to expunge their records of the entries. The clerk shall forward a
17 certified copy of the order to the sheriff, chief of police, or other charging agency; and, when
18 applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff,
19 chief, or head of such other charging agency shall then transmit the copy of the order with the
20 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the
21 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.
22 Upon receipt of a certified copy of the order, the agency must purge its records as required by
23 this section. notify State and local agencies of the court's order as provided in G.S. 15A-150.
24 The costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be
25 taxed against the petitioner.

26 (d) The Division of Motor Vehicles shall expunge from its records entries made as a
27 result of the charge or conviction ordered expunged under this section. The Division of Motor
28 Vehicles shall also reverse any administrative actions taken against a person whose record is
29 expunged under this section as a result of the charges or convictions expunged, including the
30 assessment of drivers license points and drivers license suspension or revocation.
31 Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall
32 provide to the person whose motor vehicle record is expunged under this section a certified
33 corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or
34 revoked as a result of a charge or conviction expunged under this section.

35 (e) ~~Any~~ The Department of Correction and any other applicable State or local
36 government agency shall expunge ~~from its records entries made as a result of the charge or~~
37 ~~conviction ordered expunged under this section.~~ as provided in G.S. 15A-150. The agency shall
38 also reverse any administrative actions taken against a person whose record is expunged under
39 this section as a result of the charges or convictions expunged. Notwithstanding any other
40 provision of law, the normal fee for any reinstatement of a license or privilege resulting under
41 this section shall be waived.

42 (f) Any insurance company that charged any additional premium based on insurance
43 points assessed against a policyholder as a result of a charge or conviction that was expunged
44 under this section shall refund those additional premiums to the policyholder upon notification
45 of the expungement."

46 **SECTION 7.** G.S. 15A-149(b) reads as rewritten:

47 "(b) The order of expunction shall include an instruction that any entries relating to the
48 person's apprehension, charge, or trial shall be expunged from the records of the court and
49 direct all law enforcement agencies, the Department of Correction, the Division of Motor
50 Vehicles, or any other State or local government agencies identified by the petitioner as bearing
51 record of the same to expunge their records of the entries. The clerk shall forward a certified

1 copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable,
2 to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or
3 head of such other charging agency shall then transmit the copy of the order with the form
4 supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State
5 Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon
6 receipt of a certified copy of the order, the agency must purge its records as required by this
7 section. notify State and local agencies of the court's order as provided in G.S. 15A-150. The
8 costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be
9 taxed against the petitioner."

10 **SECTION 8.(a)** G.S. 90-96(b) reads as rewritten:

11 "(b) Upon the dismissal of such person, and discharge of the proceedings against him
12 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
13 of the offense, may apply to the court for an order to expunge from all official records ~~(other~~
14 ~~than the confidential file to be retained by the Administrative Office of the Courts under~~
15 ~~subsection (c))~~ records, other than the confidential file retained by the Administrative Office of
16 the Courts under G.S. 15A-151, 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 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~~ agencies, the Department
49 of Correction, the Division of Motor Vehicles, and any other State or local government
50 agencies identified by the petitioner as bearing records of the same to expunge their records of
51 the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of~~

1 police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting
2 agency, as appropriate, shall forward such order to the State Bureau of Investigation with a
3 form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall
4 forward the court order in like manner to the Federal Bureau of Investigation. notify State and
5 local agencies of the court's order as provided in G.S. 15A-150."

6 **SECTION 8.(b)** G.S. 90-96(c) is repealed.

7 **SECTION 8.(c)** G.S. 90-96(d) reads as rewritten:

8 "(d) Whenever any person is charged with a misdemeanor under this Article by
9 possessing a controlled substance included within Schedules II through VI of this Article or a
10 felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by
11 the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not
12 guilty or other adjudication of innocence, such person may apply to the court for an order to
13 expunge from all official records all recordation relating to his arrest, indictment or
14 information, or trial. If the court determines, after hearing that such person was not over 21
15 years of age at the time any of the proceedings against him occurred, it shall enter such order.
16 The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
17 No person as to whom such order has been entered shall be held thereafter under any provision
18 of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures
19 to recite or acknowledge such arrest, or indictment or information, or trial in response to any
20 inquiry made of him for any purpose."

21 **SECTION 8.(d)** G.S. 90-96(e) reads as rewritten:

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

38 The granting of an application filed under this section shall cause the issue of an order to
39 expunge from all official records ~~(other than the confidential file to be retained by the~~
40 ~~Administrative Office of the Courts under subsection (c)) records, other than the confidential~~
41 file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation
42 relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of
43 conviction, cancellation of the judgment, and expunction of records pursuant to this section.

44 The judge to whom the petition is presented is authorized to call upon a probation officer
45 for additional investigation or verification of the petitioner's conduct since conviction. If the
46 court determines that the petitioner was convicted of (i) a misdemeanor under this Article for
47 possessing a controlled substance included within Schedules II through VI of this Article, or for
48 possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under
49 G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years
50 of age at the time of the offense, that he has been of good behavior since his conviction, that he
51 has successfully completed a drug education program approved for this purpose by the

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

14 The court shall also order that all law-enforcement ~~agencies~~ agencies, the Department of
15 Correction, the Division of Motor Vehicles, and any other State or local government agency
16 identified by the petitioner as bearing records of the conviction and records relating thereto
17 expunge their records of the conviction. The clerk shall ~~forward a certified copy of the order to~~
18 ~~the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency~~
19 ~~shall forward the order to the State Bureau of Investigation with a form supplied by the State~~
20 ~~Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like~~
21 ~~manner to the Federal Bureau of Investigation.~~ notify State and local agencies of the court's
22 order as provided in G.S. 15A-150.

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

32 **SECTION 9.(a)** G.S. 90-113.14(b) reads as rewritten:

33 "(b) Upon the dismissal of such person, and discharge of the proceedings against him
34 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
35 of the offense, may apply to the court for an order to expunge from all official ~~records (other~~
36 ~~than the confidential file to be retained by the Administrative Office of the Courts under~~
37 ~~subsection (c))~~ records, other than the confidential file retained by the Administrative Office of
38 the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment or information,
39 trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall
40 attach to the application the following:

- 41 (1) An affidavit by the applicant that he has been of good behavior during the
42 period of probation since the decision to defer further proceedings on the
43 misdemeanor in question and has not been convicted of any felony, or
44 misdemeanor, other than a traffic violation, under the laws of the United
45 States or the laws of this State or any other state;
- 46 (2) Verified affidavits by two persons who are not related to the applicant or to
47 each other by blood or marriage, that they know the character and reputation
48 of the petitioner in the community in which he lives, and that his character
49 and reputation are good;
- 50 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
51 and sheriff of the county in which the petitioner was convicted, and, if

1 different, the county of which the petitioner is a resident, showing that the
2 applicant has not been convicted of a felony or misdemeanor other than a
3 traffic violation under the laws of this State at any time prior to the
4 conviction for the misdemeanor in question or during the period of probation
5 following the decision to defer further proceedings on the misdemeanor in
6 question.

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

10 If the court determines, after hearing, that such person was dismissed and the proceedings
11 against him discharged and that he was not over 21 years of age at the time of the offense, it
12 shall enter such order. The effect of such order shall be to restore such person in the
13 contemplation of the law to the status he occupied before such arrest or indictment or
14 information. 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 trial in
17 response to any inquiry made of him for any purpose.

18 The court shall also order that said conviction and the records relating thereto be expunged
19 from the records of the court, and direct all law-enforcement agencies bearing records of the
20 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
21 order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,
22 chief of police or other arresting agency, as appropriate, shall forward such order to the State
23 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
24 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
25 Investigation. notify State and local agencies of the court's order as provided in G.S. 15A-150."

26 **SECTION 9.(b)** G.S. 90-113.14(c) reads as rewritten:

27 "(c) The clerk of superior court in each county in North Carolina shall, as soon as
28 practicable after each term of court in ~~his~~ the clerk's county, file with the Commission, the
29 names of all persons convicted under such Articles, together with the offense or offenses of
30 which such persons were convicted. ~~The clerk shall also file with the Administrative Office of~~
31 ~~the Courts the names of those persons granted a conditional discharge under the provisions of~~
32 ~~this Article, and the Administrative Office of the Court shall maintain a confidential file~~
33 ~~containing the names of persons granted conditional discharges. The information contained in~~
34 ~~such file shall be disclosed only to judges of the General Court of Justice of North Carolina for~~
35 ~~the purpose of ascertaining whether any person charged with an offense under Article 5 or 5A~~
36 ~~has been previously granted a conditional discharge."~~

37 **SECTION 9.(c)** G.S. 90-113.14(d) reads as rewritten:

38 "(d) Whenever any person is charged with a misdemeanor under this Article by
39 possessing a controlled substance included within Schedules II through VI of this Article, or by
40 possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of
41 the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or
42 other adjudication of innocence, such person may apply to the court for an order to expunge
43 from all official records all recordation relating to his arrest, indictment, or information, and
44 trial. If the court determines, after hearing that such person was not over 21 years of age at the
45 time any of the proceedings against him occurred, it shall enter such order. The clerk shall
46 notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as
47 to whom such order has been entered shall be held thereafter under any provision of any law to
48 be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or
49 acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made
50 of him for any purpose."

51 **SECTION 9.(d)** G.S. 90-113.14(e) reads as rewritten:

1 "(e) Whenever any person who has not previously been convicted of an offense under
2 this Article or under any statute of the United States or any state relating to controlled
3 substances included in any schedule of this Article or to that paraphernalia included in Article
4 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article
5 by possessing a controlled substance included within Schedules II through VI of this Article,
6 the court may, upon application of the person not sooner than 12 months after conviction, order
7 cancellation of the judgment of conviction and expunction of the records of his arrest,
8 indictment, or information, trial and conviction. A conviction in which the judgment of
9 conviction has been cancelled and the records expunged pursuant to this section shall not be
10 thereafter deemed a conviction for purposes of this section or for purposes of disqualifications
11 or liabilities imposed by law upon conviction of a crime including the additional penalties
12 imposed for second or subsequent convictions of this Article. Cancellation and expunction
13 under this section may occur only once with respect to any person. Disposition of a case under
14 this section at the district court division of the General Court of Justice shall be final for the
15 purpose of appeal.

16 The granting of an application filed under this section shall cause the issue of an order to
17 expunge from all official records ~~(other than the confidential file to be retained by the~~
18 ~~Administrative Office of the Courts under subsection (e))~~ records, other than the confidential
19 file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation
20 relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction,
21 cancellation of the judgment, and expunction of records pursuant to this section.

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

42 ~~The court shall also order that all law enforcement agencies bearing records of the~~
43 ~~conviction and records relating thereto to expunge their records of the conviction. The clerk~~
44 ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting~~
45 ~~agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of~~
46 ~~Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of~~
47 ~~Investigation shall forward the court order in like manner to the Federal Bureau of~~
48 ~~Investigation, notify State and local agencies of the court's order as provided in G.S. 15A-150.~~

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

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

7 **SECTION 10.** This act becomes effective October 1, 2010.