

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 726
Committee Substitute Favorable 5/13/09
PROPOSED SENATE COMMITTEE SUBSTITUTE H726-PCS11145-SA-77

Short Title: Clarify Expunctions.

(Public)

Sponsors:

Referred to:

March 23, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO STATUTES
3 RELATED TO EXPUNCTION OF RECORDS; TO REQUIRE STATE AND NATIONAL
4 CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; AND TO REQUIRE
5 SEX OFFENDERS RESIDING IN THIS STATE TO REGISTER AS A SEX OFFENDER
6 FOR CONVICTIONS OBTAINED OUTSIDE THIS STATE.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 14-50.30 reads as rewritten:

9 "**§ 14-50.30. Expunction of records.**

10 Any person who has not previously been convicted of any felony or misdemeanor other
11 than a traffic violation under the laws of the United States or the laws of this State or any other
12 state, may, if the offense was committed before the person attained the age of 18 years, be
13 eligible to apply for expunction of certain offenses under this Article pursuant to
14 G.S. 15A-145.1.

15 ~~information and that the conviction be expunged from the records of the court, agencies, the~~
16 ~~Department of Correction, the Division of Motor Vehicles, and any other State or local~~
17 ~~government agencies identified by the petitioner as conviction petitioner's shall notify State and~~
18 ~~local agencies of the court's order as provided in G.S. 15A-150."~~

19 **SECTION 2.** G.S. 15A-145(a) reads as rewritten:

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

- 30 (1) An affidavit by the petitioner that he has been of good behavior for the
31 two-year period since the date of conviction of the misdemeanor in question
32 and has not been convicted of any felony, or misdemeanor other than a



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- 1 traffic violation, under the laws of the United States or the laws of this State
2 or any other state.
- 3 (2) Verified affidavits of two persons who are not related to the petitioner or to
4 each other by blood or marriage, that they know the character and reputation
5 of the petitioner in the community in which he lives and that his character
6 and reputation are good.
- 7 (3) A statement that the petition is a motion in the cause in the case wherein the
8 petitioner was convicted.
- 9 (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,
10 and sheriff of the county in which the petitioner was convicted and, if
11 different, the county of which the petitioner is a resident, showing that the
12 petitioner has not been convicted of a felony or misdemeanor other than a
13 traffic violation under the laws of this State at any time prior to the
14 conviction for the misdemeanor in question or during the two year period
15 following that conviction.~~
- 16 (4a) An application on a form approved by the Administrative Office of the
17 Courts requesting and authorizing a name-based State and national criminal
18 record check by the Department of Justice using any information required by
19 the Administrative Office of the Courts to identify the individual and a
20 search of the confidential record of expunctions maintained by the
21 Administrative Office of the Courts. The application shall be forwarded to
22 the Department of Justice and to the Administrative Office of the Courts,
23 which shall conduct the searches and report their findings to the court.
- 24 (5) An affidavit by the petitioner that no restitution orders or civil judgments
25 representing amounts ordered for restitution entered against him are
26 outstanding.

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

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

33 **SECTION 3.** G.S. 15A-145(d1) reads as rewritten:

34 "(d1) Notwithstanding subsection (a) of this section and any other provision of law, a
35 person may file a petition in the court where the person was convicted for expunction of a
36 misdemeanor conviction from the person's criminal record if the person has no prior felony
37 convictions and was convicted for misdemeanor larceny pursuant to G.S. 14-72(a) more than
38 15 years prior to the filing of the petition.

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

- 40 (1) An affidavit by the petitioner that he has not been convicted of any felony,
41 has been of good behavior for the 15-year period preceding the filing of the
42 petition, and has not been convicted of any misdemeanor other than a traffic
43 violation, under the laws of the United States or the laws of this State or any
44 other state during the 15-year period.
- 45 (2) Verified affidavits of two persons who are not related to the petitioner or to
46 each other by blood or marriage, that they know the character and reputation
47 of the petitioner in the community in which he lives and that his character
48 and reputation are good.
- 49 (3) A statement that the petition is a motion in the cause in the case wherein the
50 petitioner was convicted.

1 (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~
2 ~~and sheriff of the county in which the petitioner was convicted and, if~~
3 ~~different, the county of which the petitioner is a resident, showing that the~~
4 ~~petitioner has not been convicted of a felony or misdemeanor other than a~~
5 ~~traffic violation under the laws of this State during the 10-year period~~
6 ~~preceding the filing of the petition.~~

7 (4a) An application on a form approved by the Administrative Office of the
8 Courts requesting and authorizing a name-based State and national criminal
9 record check by the Department of Justice using any information required by
10 the Administrative Office of the Courts to identify the individual and a
11 search of the confidential record of expunctions maintained by the
12 Administrative Office of the Courts. The application shall be forwarded to
13 the Department of Justice and to the Administrative Office of the Courts,
14 which shall conduct the searches and report their findings to the court.

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

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

21 The judge to whom the petition is presented is authorized to call upon a probation officer
22 for any additional investigation or verification of the petitioner's conduct during the
23 ~~10-year~~15-year period that he deems desirable.

24 If the court, after hearing, finds that the petitioner had remained of good behavior and been
25 free on conviction of any felony or misdemeanor, other than a traffic violation, during the
26 ~~10-year~~15-year period preceding the petition, the petitioner has no outstanding restitution
27 orders or civil judgments representing amounts ordered for restitution entered against him, and
28 the petitioner was convicted of misdemeanor larceny pursuant to G.S. 14-72(a) more than ~~10-15~~
29 years prior to the filing of the petition, it shall order that such person be restored, in the
30 contemplation of the law, to the status he occupied before such arrest or indictment or
31 information. No person as to whom such order has been entered shall be held thereafter under
32 any provision of any laws to be guilty of perjury or otherwise giving a false statement by
33 reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or
34 response to any inquiry made of him for any purpose.

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

37 **SECTION 4.** G.S. 15A-145.1 reads as rewritten:

38 **"§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of**
39 **conviction of certain gang offenses.**

40 (a) Whenever any person who has not previously been convicted of any felony or
41 misdemeanor other than a traffic violation under the laws of the United States or the laws of
42 this State or any other state pleads guilty to or is guilty of (i) a Class H felony under Article
43 13A of Chapter 14 of the General Statutes or (ii) an enhanced offense under G.S. 14-50.22, or
44 has been discharged and had the proceedings against the person dismissed pursuant to
45 G.S. 14-50.29, and the offense was committed before the person attained the age of 18 years,
46 the person may file a petition in the court where the person was convicted for expunction of the
47 offense from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge
48 and dismissal, the petition cannot be filed earlier than (i) two years after the date of the
49 conviction or (ii) the completion of any period of probation, whichever occurs later. The
50 petition shall contain, but not be limited to, the following:

- 1 (1) An affidavit by the petitioner that the petitioner has been of good behavior
2 (i) during the period of probation since the decision to defer further
3 proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)
4 during the two-year period since the date of conviction of the offense in
5 question, whichever applies, and has not been convicted of any felony or
6 misdemeanor other than a traffic violation under the laws of the United
7 States or the laws of this State or any other state.
- 8 (2) Verified affidavits of two persons who are not related to the petitioner or to
9 each other by blood or marriage, that they know the character and reputation
10 of the petitioner in the community in which the petitioner lives, and that the
11 petitioner's character and reputation are good.
- 12 (3) If the petition is filed subsequent to conviction of the offense in question, a
13 statement that the petition is a motion in the cause in the case wherein the
14 petitioner was convicted.
- 15 (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,
16 and sheriff of the county in which the petitioner was convicted and, if
17 different, the county of which the petitioner is a resident, showing that the
18 petitioner has not been convicted of a felony or misdemeanor other than a
19 traffic violation under the laws of this State (i) during the period of probation
20 since the decision to defer further proceedings on the offense in question
21 pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the
22 offense in question or during the two-year period following that conviction,
23 whichever applies.~~
- 24 (4a) An application on a form approved by the Administrative Office of the
25 Courts requesting and authorizing a name-based State and national criminal
26 record check by the Department of Justice using any information required by
27 the Administrative Office of the Courts to identify the individual and a
28 search of the confidential record of expunctions maintained by the
29 Administrative Office of the Courts. The application shall be forwarded to
30 the Department of Justice and to the Administrative Office of the Courts,
31 which shall conduct the searches and report their findings to the court.
- 32 (5) An affidavit by the petitioner that no restitution orders or civil judgments
33 representing amounts ordered for restitution entered against the petitioner
34 are outstanding.

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

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

41 (b) If the court, after hearing, finds that (i) the petitioner was dismissed and the
42 proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had
43 not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of
44 good behavior and been free of conviction of any felony or misdemeanor other than a traffic
45 violation for two years from the date of conviction of the offense in question, the petitioner has
46 no outstanding restitution orders or civil judgments representing amounts ordered for restitution
47 entered against ~~him~~ the petitioner, and the petitioner had not attained the age of 18 years at the
48 time of the offense in question, it shall order that such person be restored, in the contemplation
49 of the law, to the status occupied by the petitioner before such arrest or indictment or
50 ~~information.~~ information, and that the record be expunged from the records of the court. No
51 person as to whom such order has been entered shall be held thereafter under any provision of

1 any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's
2 failure to recite or acknowledge such arrest, or indictment or information, or trial, or response
3 to any inquiry made of the person for any purpose. The court shall also ~~order that the said~~
4 ~~conviction be expunged from the records of the court and direct all law enforcement agencies~~
5 agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or
6 local government agencies identified by the petitioner as bearing record of the same to expunge
7 their records of the petitioner's criminal charge and any conviction as the result of a
8 criminal resulting from the charge. The clerk shall forward a certified copy of the order to the
9 sheriff, chief of police, or other arresting agency. The sheriff, chief of police, or head of such
10 other arresting agency shall then transmit the copy of the order with a form supplied by the
11 State Bureau of Investigation to the State Bureau of Investigation, and the State Bureau of
12 Investigation shall forward the order to the Federal Bureau of Investigation. notify State and
13 local agencies of the court's order as provided in G.S. 15A-150.

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

17 **SECTION 5.** G.S. 15A-145.2 reads as rewritten:

18 **"§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
19 **time of the offense of certain drug offenses.**

20 (a) Whenever a person is discharged, and the proceedings against the person dismissed,
21 pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the
22 offense, the person may apply to the court for an order to expunge from all official records
23 ~~(other than the confidential file to be retained by the Administrative Office of the Courts under~~
24 ~~G.S. 90-96(e))~~ records, other than the confidential files retained under G.S. 15A-151, all
25 recordation relating to ~~his~~ the person's arrest, indictment or information, trial, finding of guilty,
26 and dismissal and discharge pursuant to this section. The applicant shall attach to the
27 application the following:

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

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

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

45 (3a) An application on a form approved by the Administrative Office of the
46 Courts requesting and authorizing a name-based State and national criminal
47 record check by the Department of Justice using any information required by
48 the Administrative Office of the Courts to identify the individual and a
49 search of the confidential record of expunctions maintained by the
50 Administrative Office of the Courts. The application shall be forwarded to

1 the Department of Justice and to the Administrative Office of the Courts,
2 which shall conduct the searches and report their findings to the court.

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

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

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

26 (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90
27 of the General Statutes by possessing a controlled substance included within Schedules II
28 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under
29 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of
30 the charges against ~~him~~ the person, upon entry of a nolle prosequi, or upon a finding of not
31 guilty or other adjudication of innocence, such person may apply to the court for an order to
32 expunge from all official records all recordation relating to his or her arrest, indictment or
33 information, or trial. If the court determines, after hearing, that such person was not over 21
34 years of age at the time the offense for which the person was charged occurred, it shall enter
35 such order. The clerk shall notify State and local agencies of the court's order as provided in
36 G.S. 15A-150. No person as to whom such order has been entered shall be held thereafter under
37 any provision of any law to be guilty of perjury or otherwise giving a false statement by reason
38 of ~~his~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or
39 trial in response to any inquiry made of him or her for any purpose.

40 (c) Whenever any person who has not previously been convicted of an offense under
41 Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any
42 state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the
43 General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General
44 Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of
45 Chapter 90 of the General Statutes by possessing a controlled substance included within
46 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing
47 drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by
48 possessing less than one gram of cocaine, the court may, upon application of the person not
49 sooner than 12 months after conviction, order cancellation of the judgment of conviction and
50 expunction of the records of ~~his~~ the person's arrest, indictment or information, trial, and
51 conviction. A conviction in which the judgment of conviction has been canceled and the

1 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for
2 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
3 upon conviction of a crime, including the additional penalties imposed for second or
4 subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and
5 expunction under this subsection may occur only once with respect to any person. Disposition
6 of a case under this subsection at the district court division of the General Court of Justice shall
7 be final for the purpose of appeal.

8 The granting of an application filed under this subsection shall cause the issue of an order to
9 expunge from all official records ~~(other than the confidential file to be retained by the~~
10 ~~Administrative Office of the Courts under G.S. 90-96(e))~~ records, other than the confidential
11 files retained under G.S. 15A-151, all recordation relating to the petitioner's arrest, indictment
12 or information, trial, finding of guilty, judgment of conviction, cancellation of the judgment,
13 and expunction of records pursuant to this subsection.

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

37 The court shall also order all law enforcement ~~agencies~~ agencies, the Department of
38 Correction, the Division of Motor Vehicles, and any other State or local agencies identified by
39 the petitioner as bearing records of the conviction and records relating thereto to expunge their
40 records of the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff,~~
41 ~~chief of police, or other arresting agency, as appropriate, and the arresting agency shall forward~~
42 ~~the order to the State Bureau of Investigation with a form supplied by the State Bureau of~~
43 ~~Investigation. The State Bureau of Investigation shall forward the court order in like manner to~~
44 ~~the Federal Bureau of Investigation.~~ notify State and local agencies of the court's order as
45 provided in G.S. 15A-150.

46 ~~The clerk of superior court in each county in North Carolina shall, as soon as practicable~~
47 ~~after each term of court in his county, file with the Administrative Office of the Courts the~~
48 ~~names of those persons whose judgments of convictions have been canceled and expunged~~
49 ~~under the provisions of this subsection, and the Administrative Office of the Courts shall~~
50 ~~maintain a confidential file containing the names of persons whose judgments of convictions~~
51 ~~have been canceled and expunged. The information contained in the file shall be disclosed only~~

1 to judges of the General Court of Justice of North Carolina for the purpose of ascertaining
2 whether any person charged with an offense under Article 5 of Chapter 90 of the General
3 Statutes has been previously granted cancellation and expunction of a judgment of conviction
4 pursuant to the terms of this subsection.

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

9 **SECTION 6.** G.S. 15A-145.3 reads as rewritten:

10 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
11 **time of the offense of certain toxic vapors offenses.**

12 (a) Whenever a person is discharged and the proceedings against the person dismissed
13 under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the
14 time of the offense, may apply to the court for an order to expunge from all official records
15 (~~other than the confidential file to be retained by the Administrative Office of the Courts under~~
16 ~~G.S. 90-113.14(e)) records, other than the confidential files retained under G.S. 15A-151, all~~
17 recordation relating to his the person's arrest, indictment or information, trial, finding of guilty,
18 and dismissal and discharge pursuant to this section. The applicant shall attach to the
19 application the following:

20 (1) An affidavit by the ~~applicant that he~~ petitioner that the petitioner has been of
21 good behavior during the period of probation since the decision to defer
22 further proceedings on the misdemeanor in question and has not been
23 convicted of any felony or misdemeanor other than a traffic violation under
24 the laws of the United States or the laws of this State or any other state;

25 (2) Verified affidavits by two persons who are not related to the ~~applicant~~
26 petitioner or to each other by blood or marriage, that they know the character
27 and reputation of the petitioner in the community in which ~~he the petitioner~~
28 lives, and that his or her character and reputation are good;

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

37 (3a) An application on a form approved by the Administrative Office of the
38 Courts requesting and authorizing a name-based State and national criminal
39 record check by the Department of Justice using any information required by
40 the Administrative Office of the Courts to identify the individual and a
41 search of the confidential record of expunctions maintained by the
42 Administrative Office of the Courts. The application shall be forwarded to
43 the Department of Justice and to the Administrative Office of the Courts,
44 which shall conduct the searches and report their findings to the court.

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

48 If the court determines, after hearing, that such person was discharged and the proceedings
49 against ~~him the person~~ dismissed and that he or she was not over 21 years of age at the time of
50 the offense, it shall enter such order. The effect of such order shall be to restore such person in
51 the contemplation of the law to the status ~~he the person~~ occupied before such arrest or

1 indictment or information. No person as to whom such order was entered shall be held
2 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false
3 statement by reason of ~~his~~the person's failures to recite or acknowledge such arrest, or
4 indictment or information, or trial in response to any inquiry made of him or her for any
5 purpose.

6 The court shall also order that ~~said conviction and the records relating thereto~~all records of
7 the proceeding be expunged from the records of the court and direct all law enforcement
8 agencies bearing records of the same to expunge their records of the ~~conviction proceeding~~.
9 The clerk shall ~~forward a certified copy of the order to the sheriff, chief of police, or other~~
10 ~~arresting agency, as appropriate, and the sheriff, chief of police, or other arresting agency, as~~
11 ~~appropriate, shall forward such order to the State Bureau of Investigation with a form supplied~~
12 ~~by the State Bureau of Investigation. The State Bureau of Investigation shall forward the court~~
13 ~~order in like manner to the Federal Bureau of Investigation.~~notify State and local agencies of
14 the court's order as provided in G.S. 15A-150.

15 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter
16 90 of the General Statutes or possessing drug paraphernalia as prohibited by G.S. 90-113.22,
17 upon dismissal by the State of the charges against ~~him~~the person or upon entry of a nolle
18 prosequi or upon a finding of not guilty or other adjudication of innocence, such person may
19 apply to the court for an order to expunge from all official records all recordation relating to ~~his~~
20 the person's arrest, indictment or information, and trial. If the court determines, after hearing
21 that such person was not over 21 years of age at the time the offense for which the person was
22 charged occurred, it shall enter such order. The clerk shall notify State and local agencies of the
23 court's order as provided in G.S. 15A-150. No person as to whom such order has been entered
24 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise
25 giving a false statement by reason of ~~his~~the person's failures to recite or acknowledge such
26 arrest, or indictment or information, or trial in response to any inquiry made of him or her for
27 any purpose.

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

44 The granting of an application filed under this subsection 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 G.S. 90-113.14(c))~~records, other than the
47 confidential files retained under G.S. 15A-151, all recordation relating to ~~his~~the person's
48 arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation
49 of the judgment, and expunction of records pursuant to this subsection.

50 The judge to whom the petition is presented is authorized to call upon a probation officer
51 for additional investigation or verification of the petitioner's conduct since conviction. If the

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

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

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

37 **SECTION 7.** G.S. 15A-150 reads as rewritten:

38 **"§ 15A-150. Notification requirements.**

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

- 42 (1) Persons granted ~~a discharge or an~~ expunction under this Article.
- 43 (2) Persons granted ~~an expunction a~~ conditional discharge under ~~G.S. 14-50.29~~
44 ~~or G.S. 14-50.30.~~ G.S. 14-50.29.
- 45 (3) Persons granted a conditional discharge ~~or an expunction~~ under G.S. 90-96
46 or G.S. 90-113.14.
- 47 (4) ~~Persons whose judgments of convictions have been canceled and expunged~~
48 ~~under G.S. 90-96 or G.S. 90-113.14.~~

49 (b) Notification to Other State and Local Agencies. – The clerk of superior court in
50 each county in North Carolina shall send a certified copy of an order granting an expunction to
51 a person named in subsection (a) of this section to all of the agencies listed in this subsection.

1 An agency receiving an order under this subsection shall expunge from its records all entries
2 made as a result of the charge or conviction ordered ~~expunged-expunged~~, except as provided in
3 G.S. 15A-151.

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

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

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

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

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

19 **SECTION 8.** G.S. 15A-151 reads as rewritten:

20 "**§ 15A-151.** ~~AOC maintain confidential file.~~Confidential agency files; exceptions to
21 expunction.

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

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

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

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

32 (b) All agencies required under G.S. 15A-150 to expunge from records all entries made
33 as a result of a charge or conviction ordered expunged who maintain a licensing agreement to
34 provide record information to a private entity shall maintain a confidential file containing
35 information verifying the expunction and subsequent notification to private entities as required
36 by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person
37 requesting confirmation of expunction of the record of the person's own discharge or
38 expunction, as provided in G.S. 15A-152.

39 (c) The Division of Motor Vehicles shall not be required to expunge a record if the
40 expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle
41 Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations
42 adopted pursuant to either act."

43 **SECTION 9.** G.S. 15A-152 reads as rewritten:

44 "**§ 15A-152. Civil liability for dissemination of certain criminal history information.**

45 (a) Duty to Delete Record. – A private entity that holds itself out as being in the
46 business of compiling and disseminating criminal history record information for compensation
47 shall destroy and shall not disseminate any information in the possession of the entity with
48 respect to which the entity has received a notice to delete the record in question. The private
49 entity shall delete the record within the specified time and pursuant to the terms of the licensing
50 agreement with the State agency. If the license does not specify a time for deletion, or if no

1 license agreement exists between the private entity and state agency, the private entity shall
2 delete the record within 10 business days of receiving notice to delete the record in question.

3 (b) Dissemination of Information. – Unless the entity is regulated by the federal Fair
4 Credit Reporting, Act 15 U.S.C. § 1681, et seq. or the Gramm-Leach-Bliley Act 15 U.S.C. §§
5 6801-6809, a private entity described by subsection (a) of this section that is licensed to access
6 a State agency's criminal history record database may disseminate that information only if,
7 within the 90-day period preceding the date of dissemination, the entity originally obtained the
8 information or received the information as an updated record information to its database. The
9 private entity must notify the State agency from which it receives the information of any other
10 entity to which it subsequently provides a bulk extract of the information.

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

18 (d) Certificate of Verification. – Prior to filing an action under this section, a person
19 who is the subject of a record that has been expunged may apply to the Administrative Office
20 of the Courts for a certificate verifying that the person is the subject of a record that has been
21 expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The
22 application must include a sworn affidavit attesting, under penalty of perjury, that the applicant
23 is the person who was the subject of the record in question and identifying the specific case
24 expunged. A notary or official taking an acknowledgment, oath, or affirmation of an ~~applicant~~
25 applicant's affidavit under this subsection may not disclose the nature ~~of or~~ content of the
26 application, except as required in a court action related to the application. Unless made part of
27 the record of a subsequent court proceeding, a certificate of verification and an application for
28 the certificate are not public records under G.S. 132-1. The Administrative Office of the Courts
29 may establish procedures pertaining to the application for and issuance of certificates of
30 verification.

31 (e) Notice of Record Removal. – Prior to filing an action under this section, a person
32 who is the subject of a record that has been expunged may request a notice of record removal of
33 the expunction and subsequent notification to private entities as required by G.S. 15A-150(d)
34 from an agency required under G.S. 15A-150 to expunge that person's record who maintains a
35 licensing agreement to provide record information to a private entity. The application must
36 include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person
37 who was the subject of the record in question and identifying the specific case expunged. A
38 notary or official taking an acknowledgment, oath, or affirmation of an applicant's affidavit
39 under this subsection may not disclose the nature or content of the application, except as
40 required in a court action related to the application. Unless made part of the record of a
41 subsequent court proceeding, a notice of record removal and an application for the notice are
42 not public records under G.S. 132-1. State and local agencies may establish procedures
43 pertaining to the application for and issuance of notices of record removal."

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

45 "(b) Upon the discharge of such person, and dismissal of the proceedings against ~~him~~ the
46 person under subsection (a) or (a1) of this section, such person, if he ~~were~~ or she was not over
47 21 years of age at the time of the offense, may be eligible to apply for expunction of certain
48 records relating to the offense pursuant to G.S. 15A-145.2(a).

49 ~~other than the confidential file retained by the Administrative Office of the Courts under~~
50 ~~G.S. 15A-151, agencies, the Department of Correction, the Division of Motor Vehicles, and~~

1 any other State or local government agencies identified by the petitioner as notify State and
2 local agencies of the court's order as provided in G.S. 15A-150."

3 **SECTION 11.** G.S. 90-96(d) reads as rewritten:

4 "(d) Whenever any person is charged with a misdemeanor under this Article by
5 possessing a controlled substance included within Schedules II through VI of this Article or a
6 felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by
7 the State of the charges against him, such person, upon entry of a nolle prosequi, or upon a
8 finding of not guilty or other adjudication of innocence, the person may be eligible to apply for
9 expunction of certain records relating to the offense pursuant to G.S. 15A-145.2(b). ~~The clerk~~
10 ~~shall notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

11 **SECTION 12.** G.S. 90-96(e) reads as rewritten:

12 "(e) Whenever any person who has not previously been convicted of an offense under
13 this Article or under any statute of the United States or any state relating to controlled
14 substances included in any schedule of this Article or to that paraphernalia included in Article
15 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a
16 misdemeanor under this Article by possessing a controlled substance included within Schedules
17 II through VI of this Article, or by possessing drug paraphernalia as prohibited by
18 G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than one gram of
19 cocaine, the person may be eligible to apply for cancellation of the judgment and expunction of
20 certain records related to the offense pursuant to G.S. 15A-145.2(c).

21 ~~other than the confidential file retained by the Administrative Office of the Courts under~~
22 ~~G.S. 15A-151, agencies, the Department of Correction, the Division of Motor Vehicles, and~~
23 ~~any other State or local government agency identified by the petitioner as notify State and local~~
24 ~~agencies of the court's order as provided in G.S. 15A-150."~~

25 **SECTION 13.** G.S. 90-113.14(b) reads as rewritten:

26 "(b) Upon the dismissal of such person, and discharge of the proceedings against him ~~the~~
27 ~~person~~ under subsection (a) or (a1) of this section, such person, if he or she ~~was~~ ~~were~~ not over
28 21 years of age at the time of the offense, may be eligible to apply for expunction of certain
29 records relating to the offense pursuant to G.S. 15A-145.3(a).

30 ~~other than the confidential file retained by the Administrative Office of the Courts under~~
31 ~~G.S. 15A-151, notify State and local agencies of the court's order as provided in~~
32 ~~G.S. 15A-150."~~

33 **SECTION 14.** G.S. 90-113.14(d) reads as rewritten:

34 "(d) Whenever any person is charged with a misdemeanor under this Article or
35 possessing drug paraphernalia as prohibited by G.S. 90-113.22 upon dismissal by the State of
36 the charges against him or her or upon entry of a nolle prosequi or upon a finding of not guilty
37 or other adjudication of innocence, the person may be eligible to apply for expunction of
38 certain records relating to the offense pursuant to G.S. 15A-145.3(b). ~~The clerk shall notify~~
39 ~~State and local agencies of the court's order as provided in G.S. 15A-150."~~

40 **SECTION 15.** G.S. 90-113.14(e) reads as rewritten:

41 "(e) Whenever any person who has not previously been convicted of an offense under
42 this Article or under any statute of the United States or any state relating to controlled
43 substances included in any schedule of Article 5 of Chapter 90 of the General Statutes or to that
44 paraphernalia included in Article 5B of Chapter 90 of the General Statutes pleads guilty to or
45 has been found guilty of a misdemeanor under this Article, the person may be eligible to apply
46 for cancellation of the judgment and expunction of certain records related to the offense
47 pursuant to G.S. 15A-145.3(c).

48 ~~other than the confidential file retained by the Administrative Office of the Courts under~~
49 ~~G.S. 15A-151, notify State and local agencies of the court's order as provided in~~
50 ~~G.S. 15A-150."~~

51 **SECTION 16.(a)** Section 19(e) of S.L. 2006-247 reads as rewritten:

1 "SECTION 19.(e) Section 19(a) of this act becomes effective December 1, 2006, and
2 applies to all offenses committed ~~on~~prior to, on, or after that date and to all individuals who
3 move into this State ~~on~~prior to, on, or after that date. The remainder of this section becomes
4 effective December 1, 2006, and applies to all applications for a drivers license, learner's
5 permit, instruction permit, or special identification card submitted on or after that date."

6 **SECTION 16.(b)** This section becomes effective October 1, 2010, and applies to
7 any person required to register as a sex offender under Article 27A of Chapter 14 of the
8 General Statutes, any person serving an active sentence or on supervised probation, parole, or
9 post-release supervision, for any offense, on or after that date, and any person convicted of any
10 felony offense on or after that date.

11 **SECTION 17.** Sections 7, 8, and 9, of this act become effective October 1, 2010.
12 Except as otherwise provided in this act, the remainder of this act becomes effective October 1,
13 2010, and applies to petitions for expunctions filed on or after that date.