

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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HOUSE BILL 856
PROPOSED COMMITTEE SUBSTITUTE H856-PCS10358-STf-26

Short Title: Expunctions Changes.

(Public)

Sponsors:

Referred to:

April 15, 2015

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION
3 SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A BOATING
4 VIOLATION AND TO ALLOW FOR THE EXPUNCTION OF CERTAIN YOUTHFUL
5 DRUG OFFENSES.

6 The General Assembly of North Carolina enacts:

7 **SECTION 1.** G.S. 15A-145.5(c) reads as rewritten:

8 "(c) A person may file a petition, in the court where the person was convicted, for
9 expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's
10 criminal record if the person has no other misdemeanor or felony convictions, other than a
11 traffic or boating violation. The petition shall not be filed earlier than 15 years after the date of
12 the conviction or when any active sentence, period of probation, and post-release supervision
13 has been served, whichever occurs later. The petition shall contain, but not be limited to, the
14 following:

- 15 (1) An affidavit by the petitioner that the petitioner has been of good moral
16 character since the date of conviction for the nonviolent misdemeanor or
17 nonviolent felony and has not been convicted of any other felony or
18 misdemeanor, other than a traffic or boating violation, under the laws of the
19 United States or the laws of this State or any other state.
- 20 (2) Verified affidavits of two persons who are not related to the petitioner or to
21 each other by blood or marriage, that they know the character and reputation
22 of the petitioner in the community in which the petitioner lives and that the
23 petitioner's character and reputation are good.
- 24 (3) A statement that the petition is a motion in the cause in the case wherein the
25 petitioner was convicted.
- 26 (4) An application on a form approved by the Administrative Office of the
27 Courts requesting and authorizing a name-based State and national criminal
28 history record check by the Department of Public Safety using any
29 information required by the Administrative Office of the Courts to identify
30 the individual, a search by the Department of Public Safety for any
31 outstanding warrants on pending criminal cases, and a search of the
32 confidential record of expunctions maintained by the Administrative Office
33 of the Courts. The application shall be forwarded to the Department of
34 Public Safety and to the Administrative Office of the Courts, which shall
35 conduct the searches and report their findings to the court.



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- 1 (5) An affidavit by the petitioner that no restitution orders or civil judgments
2 representing amounts ordered for restitution entered against the petitioner
3 are outstanding.

4 Upon filing of the petition, the petition shall be served upon the district attorney of the court
5 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
6 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
7 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
8 additional 30 days to file objection to the petition. The district attorney shall make his or her
9 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
10 to the date of the hearing.

11 The presiding judge is authorized to call upon a probation officer for any additional
12 investigation or verification of the petitioner's conduct since the conviction. The court shall
13 review any other information the court deems relevant, including, but not limited to, affidavits
14 or other testimony provided by law enforcement officers, district attorneys, and victims of
15 crimes committed by the petitioner.

16 If the court, after hearing, finds that the petitioner has not previously been granted an
17 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
18 15A-145.4; the petitioner has remained of good moral character; the petitioner has no
19 outstanding warrants or pending criminal cases; the petitioner has no other felony or
20 misdemeanor convictions other than a traffic violation; the petitioner has no outstanding
21 restitution orders or civil judgments representing amounts ordered for restitution entered
22 against the petitioner; and the petitioner was convicted of an offense eligible for expunction
23 under this section and was convicted of, and completed any sentence received for, the
24 nonviolent misdemeanor or nonviolent felony at least 15 years prior to the filing of the petition,
25 it may order that such person be restored, in the contemplation of the law, to the status the
26 person occupied before such arrest or indictment or information.

27 If the court denies the petition, the order shall include a finding as to the reason for the
28 denial."

29 **SECTION 2.** G.S. 15A-145 reads as rewritten:

30 **"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of**
31 **conviction of misdemeanor; expunction of certain other misdemeanors.**

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

- 42 (1) An affidavit by the petitioner that he has been of good behavior for the
43 two-year period since the date of conviction of the misdemeanor in question
44 and has not been convicted of any felony, or misdemeanor other than a
45 traffic or boating violation, under the laws of the United States or the laws of
46 this State or any other state.
- 47 (2) Verified affidavits of two persons who are not related to the petitioner or to
48 each other by blood or marriage, that they know the character and reputation
49 of the petitioner in the community in which he lives and that his character
50 and reputation are good.

- 1 (3) A statement that the petition is a motion in the cause in the case wherein the
2 petitioner was convicted.
- 3 (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and
4 applicable to petitions for expunctions filed on or after that date.
- 5 (4a) An application on a form approved by the Administrative Office of the
6 Courts requesting and authorizing a name-based State and national criminal
7 record check by the Department of Public Safety using any information
8 required by the Administrative Office of the Courts to identify the individual
9 and a search of the confidential record of expunctions maintained by the
10 Administrative Office of the Courts. The application shall be forwarded to
11 the Department of Public Safety and to the Administrative Office of the
12 Courts, which shall conduct the searches and report their findings to the
13 court.
- 14 (5) An affidavit by the petitioner that no restitution orders or civil judgments
15 representing amounts ordered for restitution entered against him are
16 outstanding.

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

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

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

35"

36 **SECTION 3.** G.S. 15A-145.1 reads as rewritten:

37 **"§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of**
38 **conviction of certain gang offenses.**

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

- 50 (1) An affidavit by the petitioner that the petitioner has been of good behavior
51 (i) during the period of probation since the decision to defer further

1 proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)
2 during the two-year period since the date of conviction of the offense in
3 question, whichever applies, and has not been convicted of any felony or
4 misdemeanor other than a traffic or boating violation under the laws of the
5 United States or the laws of this State or any other state.

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

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

13 (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and
14 applicable to petitions for expunctions filed on or after that date.

15 (4a) An application on a form approved by the Administrative Office of the
16 Courts requesting and authorizing a name-based State and national criminal
17 record check by the Department of Public Safety using any information
18 required by the Administrative Office of the Courts to identify the individual
19 and a search of the confidential record of expunctions maintained by the
20 Administrative Office of the Courts. The application shall be forwarded to
21 the Department of Public Safety and to the Administrative Office of the
22 Courts, which shall conduct the searches and report their findings to the
23 court.

24 (5) An affidavit by the petitioner that no restitution orders or civil judgments
25 representing amounts ordered for restitution entered against the petitioner
26 are 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
32 probationary period or during the two-year period after conviction.

33 (b) If the court, after hearing, finds that (i) the petitioner was dismissed and the
34 proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had
35 not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of
36 good behavior and been free of conviction of any felony or misdemeanor other than a traffic or
37 boating violation for two years from the date of conviction of the offense in question, the
38 petitioner has no outstanding restitution orders or civil judgments representing amounts ordered
39 for restitution entered against the petitioner, and the petitioner had not attained the age of 18
40 years at the time of the offense in question, it shall order that such person be restored, in the
41 contemplation of the law, to the status occupied by the petitioner before such arrest or
42 indictment or information, and that the record be expunged from the records of the court. No
43 person as to whom such order has been entered shall be held thereafter under any provision of
44 any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's
45 failure to recite or acknowledge such arrest, or indictment or information, or trial, or response
46 to any inquiry made of the person for any purpose. The court shall also direct all law
47 enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the
48 Division of Motor Vehicles, and any other State or local government agencies identified by the
49 petitioner as bearing record of the same to expunge their records of the petitioner's criminal
50 charge and any conviction resulting from the charge. The clerk shall notify State and local
51 agencies of the court's order as provided in G.S. 15A-150.

1 "

2 **SECTION 4.** G.S. 15A-145.2 reads as rewritten:

3 "**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
4 **time of the offense of certain drug offenses.**

5 (a) Whenever a person is discharged, and the proceedings against the person dismissed,
6 pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the
7 offense, the person may apply to the court for an order to expunge from all official records,
8 other than the confidential files retained under G.S. 15A-151, all recordation relating to the
9 person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge
10 pursuant to this section. The applicant shall attach to the application the following:

11 (1) An affidavit by the petitioner that he or she has been of good behavior
12 during the period of probation since the decision to defer further proceedings
13 on the offense in question and has not been convicted of any felony or
14 misdemeanor other than a traffic or boating violation under the laws of the
15 United States or the laws of this State or any other state;

16 (2) Verified affidavits by two persons who are not related to the petitioner or to
17 each other by blood or marriage, that they know the character and reputation
18 of the petitioner in the community in which he or she lives, and that the
19 petitioner's character and reputation are good;

20 (3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and
21 applicable to petitions for expunctions filed on or after that date.

22 (3a) An application on a form approved by the Administrative Office of the
23 Courts requesting and authorizing a name-based State and national criminal
24 record check by the Department of Public Safety using any information
25 required by the Administrative Office of the Courts to identify the individual
26 and a search of the confidential record of expunctions maintained by the
27 Administrative Office of the Courts. The application shall be forwarded to
28 the Department of Public Safety and to the Administrative Office of the
29 Courts, which shall conduct the searches and report their findings to the
30 court.

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

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

42 The court shall also order that all records of the proceeding be expunged from the records
43 of the court and direct all law enforcement agencies, the Division of Adult Correction, the
44 Division of Motor Vehicles, and any other State and local government agencies identified by
45 the petitioner as bearing records of the same to expunge their records of the proceeding. The
46 clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

47 ...

48 (c) Whenever any person who has not previously been convicted of (i) any felony
49 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
50 Statutes; or (iii) an offense under any statute of the United States or any state relating to
51 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that

1 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
2 has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes
3 by possessing a controlled substance included within Schedules I through VI of Chapter 90, or
4 by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has
5 been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the
6 person not sooner than 12 months after conviction, order cancellation of the judgment of
7 conviction and expunction of the records of the person's arrest, indictment or information, trial,
8 and conviction. A conviction in which the judgment of conviction has been canceled and the
9 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for
10 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
11 upon conviction of a crime, including the additional penalties imposed for second or
12 subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and
13 expunction under this subsection may occur only once with respect to any person. Disposition
14 of a case under this subsection at the district court division of the General Court of Justice shall
15 be final for the purpose of appeal.

16 The granting of an application filed under this subsection shall cause the issue of an order to
17 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
18 all recordation relating to the petitioner's arrest, indictment or information, trial, finding of
19 guilty, judgment of conviction, cancellation of the judgment, and expunction of records
20 pursuant to this subsection.

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

44 The court shall also order all law enforcement agencies, the Department of Correction, the
45 Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as
46 bearing records of the conviction and records relating thereto to expunge their records of the
47 conviction. The clerk shall notify State and local agencies of the court's order as provided in
48 G.S. 15A-150.

49"

50 **SECTION 5.** G.S. 15A-145.3 reads as rewritten:

1 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
2 **time of the offense of certain toxic vapors offenses.**

3 (a) Whenever a person is discharged and the proceedings against the person dismissed
4 under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the
5 time of the offense, may apply to the court for an order to expunge from all official records,
6 other than the confidential files retained under G.S. 15A-151, all recordation relating to the
7 person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge
8 pursuant to this section. The applicant shall attach to the application the following:

- 9 (1) An affidavit by the petitioner that the petitioner has been of good behavior
10 during the period of probation since the decision to defer further proceedings
11 on the misdemeanor in question and has not been convicted of any felony or
12 misdemeanor other than a traffic or boating violation under the laws of the
13 United States or the laws of this State or any other state;
- 14 (2) Verified affidavits by two persons who are not related to the petitioner or to
15 each other by blood or marriage, that they know the character and reputation
16 of the petitioner in the community in which the petitioner lives, and that his
17 or her character and reputation are good;
- 18 (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and
19 applicable to petitions for expunctions filed on or after that date.
- 20 (3a) An application on a form approved by the Administrative Office of the
21 Courts requesting and authorizing a name-based State and national criminal
22 record check by the Department of Public Safety using any information
23 required by the Administrative Office of the Courts to identify the individual
24 and a search of the confidential record of expunctions maintained by the
25 Administrative Office of the Courts. The application shall be forwarded to
26 the Department of Public Safety and to the Administrative Office of the
27 Courts, which shall conduct the searches and report their findings to the
28 court.

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

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

40 The court shall also order that all records of the proceeding be expunged from the records
41 of the court and direct all law enforcement agencies bearing records of the same to expunge
42 their records of the proceeding. The clerk shall notify State and local agencies of the court's
43 order as provided in G.S. 15A-15.

44 ...

45 (c) Whenever any person who has not previously been convicted of an offense under
46 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States
47 or any state relating to controlled substances included in any schedule of Article 5 of Chapter
48 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the
49 General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A
50 of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner
51 than 12 months after conviction, order cancellation of the judgment of conviction and

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

10 The granting of an application filed under this subsection shall cause the issue of an order to
11 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
12 all recordation relating to the person's arrest, indictment or information, trial, finding of guilty,
13 judgment of conviction, cancellation of the judgment, and expunction of records pursuant to
14 this subsection.

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

36 The clerk shall notify State and local agencies of the court's order as provided in
37 G.S. 15A-150.

38"

39 **SECTION 6.** G.S. 15A-145.4 reads as rewritten:

40 "**§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
41 **the time of the commission of a nonviolent felony.**

42 ...

43 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
44 commission of the offense and has not previously been convicted of any felony or
45 misdemeanor other than a traffic or boating violation under the laws of the United States or the
46 laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the
47 person may file a petition in the court where the person was convicted for expunction of the
48 nonviolent felony from the person's criminal record. The petition shall not be filed earlier than
49 four years after the date of the conviction or when any active sentence, period of probation, and
50 post-release supervision has been served, whichever occurs later. The person shall also perform

1 at least 100 hours of community service, preferably related to the conviction, before filing a
2 petition for expunction under this section. The petition shall contain the following:

- 3 (1) An affidavit by the petitioner that the petitioner has been of good moral
4 character since the date of conviction of the nonviolent felony in question
5 and has not been convicted of any other felony or any misdemeanor other
6 than a traffic or boating violation under the laws of the United States or the
7 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) A statement that the petition is a motion in the cause in the case wherein the
13 petitioner was convicted.
- 14 (4) An application on a form approved by the Administrative Office of the
15 Courts requesting and authorizing (i) a State and national criminal history
16 record check by the Department of Public Safety using any information
17 required by the Administrative Office of the Courts to identify the
18 individual; (ii) a search by the Department of Public Safety for any
19 outstanding warrants or pending criminal cases; and (iii) a search of the
20 confidential record of expunctions maintained by the Administrative Office
21 of the Courts. The application shall be forwarded to the Department of
22 Public Safety and to the Administrative Office of the Courts, which shall
23 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 the petitioner
26 are outstanding.
- 27 (6) An affidavit by the petitioner that the petitioner has performed at least 100
28 hours of community service since the conviction for the nonviolent felony.
29 The affidavit shall include a list of the community services performed, a list
30 of the recipients of the services, and a detailed description of those services.
- 31 (7) An affidavit by the petitioner that the petitioner possesses a high school
32 diploma, a high school graduation equivalency certificate, or a General
33 Education Development degree.

34 The petition shall be served upon the district attorney of the court wherein the case was
35 tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file
36 any objection thereto and shall be duly notified as to the date of the hearing of the petition. The
37 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
38 victim of the request for expunction prior to the date of the hearing.

39 ...
40 (e) The court may order that the person be restored, in the contemplation of the law, to
41 the status the person occupied before the arrest or indictment or information if the court finds
42 all of the following after a hearing:

- 43 (1) The petitioner has remained of good moral character and has been free of
44 conviction of any felony or misdemeanor, other than a traffic or boating
45 violation, for four years from the date of conviction of the nonviolent felony
46 in question or any active sentence, period of probation, or post-release
47 supervision has been served, whichever is later.
- 48 (2) The petitioner has not previously been convicted of any felony or
49 misdemeanor other than a traffic or boating violation under the laws of the
50 United States or the laws of this State or any other state.
- 51 (3) The petitioner has no outstanding warrants or pending criminal cases.

- 1 (4) The petitioner has no outstanding restitution orders or civil judgments
2 representing amounts ordered for restitution entered against the petitioner.
3 (5) The petitioner was less than 18 years old at the time of the commission of
4 the offense in question.
5 (6) The petitioner has performed at least 100 hours of community service since
6 the time of the conviction and possesses a high school diploma, a high
7 school graduation equivalency certificate, or a General Education
8 Development degree.
9 (7) The search of the confidential records of expunctions conducted by the
10 Administrative Office of the Courts shows that the petitioner has not been
11 previously granted an expunction.

12"

13 **SECTION 7.** G.S. 15A-145.6(f) reads as rewritten:

14 "(f) The court shall order that the person be restored, in the contemplation of the law, to
15 the status the person occupied before the arrest or indictment or information if the court finds
16 all of the following after a hearing:

- 17 (1) The criteria set out in subsection (b) of this section are satisfied.
18 (2) The petitioner has remained of good moral character and has been free of
19 conviction of any felony or misdemeanor, other than a traffic or boating
20 violation, since the date of conviction of the prostitution offense in question.
21 (3) The petitioner has no outstanding warrants or pending criminal cases.
22 (4) The petitioner has no outstanding restitution orders or civil judgments
23 representing amounts ordered for restitution entered against the petitioner.
24 (5) The search of the confidential records of expunctions conducted by the
25 Administrative Office of the Courts shows that the petitioner has not been
26 previously granted an expunction, other than an expunction for a prostitution
27 offense."

28 **SECTION 8.** Article 5 of Chapter 15A of the General Statutes is amended by
29 adding a new section to read:

30 **"§ 15A-145.7. Expunction of certain youth drug offenses.**

31 (a) The following definitions apply to this section:

- 32 (1) Drug free. – Free from drug dependency and any unlawful use of controlled
33 substances.
34 (2) Youthful drug offense. – A conviction of any violation of G.S. 90-95(a)(3)
35 or G.S. 90-113.22 where the defendant had not yet attained the age of 25
36 years at the time of the commission of the offense.

37 (b) Notwithstanding any other provision of law, if the person is convicted of more than
38 one youthful drug offense in the same session of court, then the multiple youthful drug offense
39 convictions shall be treated as one youthful drug offense conviction under this section, and the
40 expunction order issued under this section shall provide that the multiple youthful drug offense
41 convictions shall be expunged from the person's record in accordance with this section.

42 (c) A person may file a petition in the court where the person was convicted for
43 expunction of up to two youthful drug offense convictions from the person's criminal record if
44 the person has no misdemeanor or felony convictions, other than a traffic or boating violation,
45 for a period of at least 10 years prior to the date that the petition is filed; convicted of a youthful
46 drug offense that is eligible pursuant to subsection (a) of this section; and provides proof
47 pursuant to subsection (d) of this section that the person is drug free and has been drug free for
48 a period of at least one year prior to the date that the petition is filed. The petition shall not be
49 filed earlier than (i) 10 years after the date of the conviction or (ii) when any active sentence,
50 period of probation, and post-release supervision has been served, whichever occurs later. If the
51 petition is to expunge two youthful drug offense convictions, the petition shall not be filed

1 earlier than 10 years after the date of the last conviction or when any active sentence, period of
2 probation, and post-release supervision has been served for the last conviction, whichever
3 occurs later.

4 (d) To establish that a person is drug free and has been drug free for a period of at least
5 one year prior to the date that the petition is filed, a person shall provide proof that the person
6 has been tested for drugs every 30 days for a period of at least one year immediately preceding
7 the date that the petition is filed and tested drug free at each testing, and shall also provide a
8 drug evaluation for review by the court. The Administrative Office of the Courts, in
9 cooperation with the Department of Health and Human Services, shall determine what type of
10 documentation must be provided to the court regarding the required drug testing and evaluation
11 and the format in which the documentation shall be presented to the court for review.

12 (e) The petition shall contain, but not be limited to, the following:

13 (1) An affidavit by the petitioner that the petitioner is of good moral character
14 and has not been convicted of any felony or misdemeanor, other than a
15 traffic or boating violation, under the laws of the United States or the laws of
16 this State or any other state for a period of at least 10 years prior to the date
17 that the petition is filed.

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

22 (3) A statement that the petition is a motion in the cause in the case wherein the
23 petitioner was convicted.

24 (4) 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 history record check by the Department of Public Safety using any
27 information required by the Administrative Office of the Courts to identify
28 the individual, a search by the Department of Public Safety for any
29 outstanding warrants on pending criminal cases, and a search of the
30 confidential record of expunctions maintained by the Administrative Office
31 of the Courts. The application shall be forwarded to the Department of
32 Public Safety and to the Administrative Office of the Courts, which shall
33 conduct the searches and report their findings to the court.

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

37 (6) Documentation in a format approved by the Administrative Office of the
38 Courts establishing that the petitioner is drug free and has been drug free for
39 a period of at least one year prior to the date of the filing of the petition.

40 Upon filing of the petition, the petition shall be served upon the district attorney of the court
41 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
42 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
43 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
44 additional 30 days to file objection to the petition. The district attorney shall make his or her
45 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
46 to the date of the hearing.

47 The presiding judge may call upon a probation officer for any additional investigation or
48 verification of the petitioner's conduct since the conviction. The court shall review any other
49 information the court deems relevant, including, but not limited to, affidavits or other testimony
50 provided by law enforcement officers, district attorneys, and victims of crimes committed by
51 the petitioner.

1 (f) If the court after hearing finds that the petitioner has not previously been granted an
2 expunction under this section, the petitioner is drug free; the petitioner is of good moral
3 character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner
4 has no felony or misdemeanor convictions other than a traffic violation, for a period of 10 years
5 prior to the filing of the petition; the petitioner has no outstanding restitution orders or civil
6 judgments representing amounts ordered for restitution entered against the petitioner; the
7 petition for expunction of a youthful drug offense conviction was filed at least 10 years after
8 the date of conviction or, if the petition for expunction is for two youthful drug offense
9 convictions, the petition was filed at least 10 years after the date of the later conviction; and the
10 petitioner has completed any sentence received for the conviction, it may order that such person
11 be restored, in the contemplation of the law, to the status the person occupied before such arrest
12 or indictment or information. If the court denies the petition, the order shall include a finding as
13 to the reason for the denial.

14 (g) No person as to whom an order has been entered pursuant to this section shall be
15 held thereafter under any provision of any law to be guilty of perjury or otherwise giving a
16 false statement by reason of that person's failure to recite or acknowledge the arrest, indictment,
17 information, trial, or conviction. Persons pursuing certification under the provisions of Chapter
18 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the
19 certifying Commission, regardless of whether or not the convictions were expunged pursuant to
20 the provisions of this section. Persons required by State law to obtain a criminal history record
21 check on a prospective employee shall not be deemed to have knowledge of any convictions
22 expunged under this section.

23 (h) The court shall also order that the conviction be expunged from the records of the
24 court and direct all law enforcement agencies bearing record of the same to expunge their
25 records of the conviction. The clerk shall notify State and local agencies of the court's order, as
26 provided in G.S. 15A-150.

27 (i) Any other applicable State or local government agency shall expunge from its
28 records entries made as a result of the conviction ordered expunged under this section upon
29 receipt from the petitioner of an order entered pursuant to this section. The agency shall also
30 vacate and reconsider any administrative actions taken against a person whose record is
31 expunged under this section as a result of the charges or convictions expunged.

32 (j) A person who files a petition for expunction of a criminal record under this section
33 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
34 time the petition is filed. Fees collected under this subsection are payable to the Administrative
35 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
36 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
37 costs of criminal record checks performed in connection with processing petitions for
38 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
39 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
40 processing petitions for expunctions under this section. This subsection does not apply to
41 petitions filed by an indigent."

42 **SECTION 9.** This act is effective when it becomes law.