

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

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SENATE BILL 570
Judiciary II Committee Substitute Adopted 4/21/15
PROPOSED COMMITTEE SUBSTITUTE S570-PCS15238-TJ-23

Short Title: Expunction/Boat Violation.

(Public)

Sponsors:

Referred to:

March 30, 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 MISDEMEANOR
4 BOATING VIOLATION AND TO PROVIDE THAT CERTAIN CONVICTIONS FOR
5 DRIVING WHILE IMPAIRED AND BOATING WHILE IMPAIRED ARE NOT
6 ELIGIBLE FOR EXPUNCTION.

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 15A-145.5 reads as rewritten:

9 **"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

10 (a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent
11 felony" means any misdemeanor or felony except the following:

- 12 (1) A Class A through G felony or a Class A1 misdemeanor.
- 13 (2) An offense that includes assault as an essential element of the offense.
- 14 (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of
15 the General Statutes, whether or not the person is currently required to
16 register.
- 17 (4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b),
18 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3,
19 14-277.3A, 14-321.1.
- 20 (5) Any felony offense in Chapter 90 of the General Statutes where the offense
21 involves methamphetamines, heroin, or possession with intent to sell or
22 deliver or sell and deliver cocaine.
- 23 (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for
24 which punishment was determined pursuant to G.S. 14-3(c).
- 25 (7) An offense under G.S. 14-401.16.
- 26 (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
- 27 (8) Any felony offense in which a commercial motor vehicle was used in the
28 commission of the offense.
- 29 (9) Any offense that is an attempt to commit an offense described in
30 subdivisions (1) through (8) of this subsection.
- 31 (10) An offense under G.S. 20-138.1, 20-138.2, or 20-138.5, for driving while
32 impaired, or under G.S. 75A-10(b1) for boating while impaired.

33 (b) Notwithstanding any other provision of law, if the person is convicted of more than
34 one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the
35 nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person



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1 had already been served with criminal process for the commission of a nonviolent felony or
2 nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor
3 convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction
4 under this section, and the expunction order issued under this section shall provide that the
5 multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be
6 expunged from the person's record in accordance with this section.

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

- 14 (1) An affidavit by the petitioner that the petitioner has been of good moral
15 character since the date of conviction for the nonviolent misdemeanor or
16 nonviolent felony and has not been convicted of any other felony or
17 misdemeanor, other than a traffic ~~violation~~ violation or a misdemeanor
18 boating violation, under the laws of the United States or the laws of this
19 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.
- 36 (5) An affidavit by the petitioner that no restitution orders or civil judgments
37 representing amounts ordered for restitution entered against the petitioner
38 are outstanding.

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

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

1 If the court, after hearing, finds that the petitioner has not previously been granted an
2 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
3 15A-145.4; the petitioner has remained of good moral character; the petitioner has no
4 outstanding warrants or pending criminal cases; the petitioner has no other felony or
5 misdemeanor convictions other than a traffic ~~violation~~, violation or a misdemeanor boating
6 violation; the petitioner has no outstanding restitution orders or civil judgments representing
7 amounts ordered for restitution entered against the petitioner; and the petitioner was convicted
8 of an offense eligible for expunction under this section and was convicted of, and completed
9 any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years
10 prior to the filing of the petition, it may order that such person be restored, in the contemplation
11 of the law, to the status the person occupied before such arrest or indictment or information. If
12 the court denies the petition, the order shall include a finding as to the reason for the denial."

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

14 **"§ 15A-145. Expunction of records for first offenders under the age of 18 at the time of**
15 **conviction of misdemeanor; expunction of certain other misdemeanors.**

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

- 27 (1) An affidavit by the petitioner that he has been of good behavior for the
28 two-year period since the date of conviction of the misdemeanor in question
29 and has not been convicted of any felony, or misdemeanor other than a
30 traffic ~~violation~~, violation or a misdemeanor boating violation, under the
31 laws of the United States or the laws of this State or any other state.
- 32 (2) Verified affidavits of two persons who are not related to the petitioner or to
33 each other by blood or marriage, that they know the character and reputation
34 of the petitioner in the community in which he lives and that his character
35 and reputation are good.
- 36 (3) A statement that the petition is a motion in the cause in the case wherein the
37 petitioner was convicted.
- 38 (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and
39 applicable to petitions for expunctions filed on or after that date.
- 40 (4a) An application on a form approved by the Administrative Office of the
41 Courts requesting and authorizing a name-based State and national criminal
42 record check by the Department of Public Safety using any information
43 required by the Administrative Office of the Courts to identify the individual
44 and a search of the confidential record of expunctions maintained by the
45 Administrative Office of the Courts. The application shall be forwarded to
46 the Department of Public Safety and to the Administrative Office of the
47 Courts, which shall conduct the searches and report their findings to the
48 court.
- 49 (5) An affidavit by the petitioner that no restitution orders or civil judgments
50 representing amounts ordered for restitution entered against him are
51 outstanding.

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

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

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

19"

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

21 "**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of**
22 **conviction of certain gang offenses.**

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

- 34 (1) An affidavit by the petitioner that the petitioner has been of good behavior
35 (i) during the period of probation since the decision to defer further
36 proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)
37 during the two-year period since the date of conviction of the offense in
38 question, whichever applies, and has not been convicted of any felony or
39 misdemeanor other than a traffic violation or a misdemeanor boating
40 violation under the laws of the United States or the laws of this State or any
41 other state.
- 42 (2) Verified affidavits of two persons who are not related to the petitioner or to
43 each other by blood or marriage, that they know the character and reputation
44 of the petitioner in the community in which the petitioner lives, and that the
45 petitioner's character and reputation are good.
- 46 (3) If the petition is filed subsequent to conviction of the offense in question, a
47 statement that the petition is a motion in the cause in the case wherein the
48 petitioner was convicted.
- 49 (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and
50 applicable to petitions for expunctions filed on or after that date.

- 1 (4a) An application on a form approved by the Administrative Office of the
2 Courts requesting and authorizing a name-based State and national criminal
3 record check by the Department of Public Safety using any information
4 required by the Administrative Office of the Courts to identify the individual
5 and a search of the confidential record of expunctions maintained by the
6 Administrative Office of the Courts. The application shall be forwarded to
7 the Department of Public Safety and to the Administrative Office of the
8 Courts, which shall conduct the searches and report their findings to the
9 court.
- 10 (5) An affidavit by the petitioner that no restitution orders or civil judgments
11 representing amounts ordered for restitution entered against the petitioner
12 are outstanding.

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

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

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

38"

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

40 **"§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
41 **time of the offense of certain drug offenses.**

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

- 48 (1) An affidavit by the petitioner that he or she has been of good behavior
49 during the period of probation since the decision to defer further proceedings
50 on the offense in question and has not been convicted of any felony or
51 misdemeanor other than a traffic violation or a misdemeanor boating

1 violation under the laws of the United States or the laws of this State or any
2 other state;

3 (2) Verified affidavits by 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 or she lives, and that the
6 petitioner's character and reputation are good;

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

9 (3a) An application on a form approved by the Administrative Office of the
10 Courts requesting and authorizing a name-based State and national criminal
11 record check by the Department of Public Safety using any information
12 required by the Administrative Office of the Courts to identify the individual
13 and a search of the confidential record of expunctions maintained by the
14 Administrative Office of the Courts. The application shall be forwarded to
15 the Department of Public Safety and to the Administrative Office of the
16 Courts, which shall conduct the searches and report their findings to the
17 court.

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

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

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

34 ...

35 (c) Whenever any person who has not previously been convicted of (i) any felony
36 offense under any state or federal laws; (ii) any offense under Chapter 90 of the General
37 Statutes; or (iii) an offense under any statute of the United States or any state relating to
38 controlled substances included in any schedule of Chapter 90 of the General Statutes or to that
39 paraphernalia included in Article 5B of Chapter 90 of the General Statutes, pleads guilty to or
40 has been found guilty of a misdemeanor under Article 5 of Chapter 90 of the General Statutes
41 by possessing a controlled substance included within Schedules I through VI of Chapter 90, or
42 by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has
43 been found guilty of a felony under G.S. 90-95(a)(3), the court may, upon application of the
44 person not sooner than 12 months after conviction, order cancellation of the judgment of
45 conviction and expunction of the records of the person's arrest, indictment or information, trial,
46 and conviction. A conviction in which the judgment of conviction has been canceled and the
47 records expunged pursuant to this subsection shall not be thereafter deemed a conviction for
48 purposes of this subsection or for purposes of disqualifications or liabilities imposed by law
49 upon conviction of a crime, including the additional penalties imposed for second or
50 subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and
51 expunction under this subsection may occur only once with respect to any person. Disposition

1 of a case under this subsection at the district court division of the General Court of Justice shall
2 be final for the purpose of appeal.

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

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

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

37"

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

39 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
40 **time of the offense of certain toxic vapors offenses.**

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

- 47 (1) An affidavit by the petitioner that the petitioner has been of good behavior
48 during the period of probation since the decision to defer further proceedings
49 on the misdemeanor in question and has not been convicted of any felony or
50 misdemeanor other than a traffic violation or a misdemeanor boating

1 violation under the laws of the United States or the laws of this State or any
2 other state;

3 (2) Verified affidavits by 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 the petitioner lives, and that his
6 or her character and reputation are good;

7 (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and
8 applicable to petitions for expunctions filed on or after that date.

9 (3a) An application on a form approved by the Administrative Office of the
10 Courts requesting and authorizing a name-based State and national criminal
11 record check by the Department of Public Safety using any information
12 required by the Administrative Office of the Courts to identify the individual
13 and a search of the confidential record of expunctions maintained by the
14 Administrative Office of the Courts. The application shall be forwarded to
15 the Department of Public Safety and to the Administrative Office of the
16 Courts, which shall conduct the searches and report their findings to the
17 court.

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

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

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

33 ...

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

50 The granting of an application filed under this subsection shall cause the issue of an order to
51 expunge from all official records, other than the confidential files retained under G.S. 15A-151,

1 all recordation relating to the person's arrest, indictment or information, trial, finding of guilty,
2 judgment of conviction, cancellation of the judgment, and expunction of records pursuant to
3 this subsection.

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

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

27"

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

29 **"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
30 **the time of the commission of a nonviolent felony.**

31 ...

32 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
33 commission of the offense and has not previously been convicted of any felony or
34 misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws
35 of the United States or the laws of this State or any other state pleads guilty to or is guilty of a
36 nonviolent felony, the person may file a petition in the court where the person was convicted
37 for expunction of the nonviolent felony from the person's criminal record. The petition shall not
38 be filed earlier than four years after the date of the conviction or when any active sentence,
39 period of probation, and post-release supervision has been served, whichever occurs later. The
40 person shall also perform at least 100 hours of community service, preferably related to the
41 conviction, before filing a petition for expunction under this section. The petition shall contain
42 the following:

- 43 (1) An affidavit by the petitioner that the petitioner has been of good moral
44 character since the date of conviction of the nonviolent felony in question
45 and has not been convicted of any other felony or any misdemeanor other
46 than a traffic violation or a misdemeanor boating violation under the laws of
47 the United States or the laws of this State or any other state.
- 48 (2) Verified affidavits of two persons who are not related to the petitioner or to
49 each other by blood or marriage, that they know the character and reputation
50 of the petitioner in the community in which the petitioner lives and that the
51 petitioner's character 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) An application on a form approved by the Administrative Office of the
4 Courts requesting and authorizing (i) a State and national criminal history
5 record check by the Department of Public Safety using any information
6 required by the Administrative Office of the Courts to identify the
7 individual; (ii) a search by the Department of Public Safety for any
8 outstanding warrants or pending criminal cases; and (iii) a search of the
9 confidential record of expunctions maintained by the Administrative Office
10 of the Courts. The application shall be forwarded to the Department of
11 Public Safety and to the Administrative Office of the Courts, which shall
12 conduct the searches and report their findings to the court.
- 13 (5) An affidavit by the petitioner that no restitution orders or civil judgments
14 representing amounts ordered for restitution entered against the petitioner
15 are outstanding.
- 16 (6) An affidavit by the petitioner that the petitioner has performed at least 100
17 hours of community service since the conviction for the nonviolent felony.
18 The affidavit shall include a list of the community services performed, a list
19 of the recipients of the services, and a detailed description of those services.
- 20 (7) An affidavit by the petitioner that the petitioner possesses a high school
21 diploma, a high school graduation equivalency certificate, or a General
22 Education Development degree.

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

28 ...

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

- 32 (1) The petitioner has remained of good moral character and has been free of
33 conviction of any felony or misdemeanor, other than a traffic or boating
34 violation, for four years from the date of conviction of the nonviolent felony
35 in question or any active sentence, period of probation, or post-release
36 supervision has been served, whichever is later.
- 37 (2) The petitioner has not previously been convicted of any felony or
38 misdemeanor other than a traffic violation or a misdemeanor boating
39 violation under the laws of the United States or the laws of this State or any
40 other state.
- 41 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 42 (4) The petitioner has no outstanding restitution orders or civil judgments
43 representing amounts ordered for restitution entered against the petitioner.
- 44 (5) The petitioner was less than 18 years old at the time of the commission of
45 the offense in question.
- 46 (6) The petitioner has performed at least 100 hours of community service since
47 the time of the conviction and possesses a high school diploma, a high
48 school graduation equivalency certificate, or a General Education
49 Development degree.

1 (7) The search of the confidential records of expunctions conducted by the
2 Administrative Office of the Courts shows that the petitioner has not been
3 previously granted an expunction.

4"

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

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

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

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

22 "**§ 14-50.30. Expunction of records.**

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

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