

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

S

D

SENATE BILL 570
Judiciary II Committee Substitute Adopted 4/21/15
Judiciary II Committee Substitute Adopted 4/28/15
PROPOSED HOUSE COMMITTEE SUBSTITUTE S570-PCS45380-STf-61

Short Title: Expunction/Boat Violation.

(Public)

Sponsors:

Referred to:

March 30, 2015

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A MISDEMEANOR BOATING VIOLATION; TO PROVIDE THAT CERTAIN CONVICTIONS FOR DRIVING WHILE IMPAIRED AND BOATING WHILE IMPAIRED ARE NOT ELIGIBLE FOR EXPUNCTION; AND TO ALLOW FOR THE EXPUNCTION OF CERTAIN YOUTHFUL DRUG OFFENSES.

The General Assembly of North Carolina enacts:

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

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

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

- (1) A Class A through G felony or a Class A1 misdemeanor.
- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
- (7) An offense under G.S. 14-401.16.
- (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
- (8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
- (9) Any offense that is an attempt to commit an offense described in subdivisions (1) through (8) of this subsection.
- (10) An offense involving impaired driving as defined in G.S. 20-4.01(24a).

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the



* S 5 7 0 - P C S 4 5 3 8 0 - S T F - 6 1 *

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

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 violation, violation or a misdemeanor boating violation.~~ traffic violation, violation or a misdemeanor boating violation. The petition shall not be filed
12 earlier than 15 years after the date of the conviction or when any active sentence, period of
13 probation, and post-release supervision has been served, whichever occurs later. The petition
14 shall contain, but not be limited to, the 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 violation, violation or a misdemeanor~~
19 boating violation, under the laws of the United States or the laws of this
20 State or any other state.
- 21 (2) Verified affidavits of two persons who are not related to the petitioner or to
22 each other by blood or marriage, that they know the character and reputation
23 of the petitioner in the community in which the petitioner lives and that the
24 petitioner's character and reputation are good.
- 25 (3) A statement that the petition is a motion in the cause in the case wherein the
26 petitioner was convicted.
- 27 (4) An application on a form approved by the Administrative Office of the
28 Courts requesting and authorizing a name-based State and national criminal
29 history record check by the Department of Public Safety using any
30 information required by the Administrative Office of the Courts to identify
31 the individual, a search by the Department of Public Safety for any
32 outstanding warrants on pending criminal cases, and a search of the
33 confidential record of expunctions maintained by the Administrative Office
34 of the Courts. The application shall be forwarded to the Department of
35 Public Safety and to the Administrative Office of the Courts, which shall
36 conduct the searches and report their findings to the court.
- 37 (5) An affidavit by the petitioner that no restitution orders or civil judgments
38 representing amounts ordered for restitution entered against the petitioner
39 are outstanding.

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

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

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

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

- 28 (1) An affidavit by the petitioner that he has been of good behavior for the
29 two-year period since the date of conviction of the misdemeanor in question
30 and has not been convicted of any felony, or misdemeanor other than a
31 traffic ~~violation~~; violation or a misdemeanor boating violation, under the
32 laws of the United States or the laws of this State or any other state.
- 33 (2) Verified affidavits of two persons who are not related to the petitioner or to
34 each other by blood or marriage, that they know the character and reputation
35 of the petitioner in the community in which he lives and that his character
36 and reputation are good.
- 37 (3) A statement that the petition is a motion in the cause in the case wherein the
38 petitioner was convicted.
- 39 (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and
40 applicable to petitions for expunctions filed on or after that date.
- 41 (4a) An application on a form approved by the Administrative Office of the
42 Courts requesting and authorizing a name-based State and national criminal
43 record check by the Department of Public Safety using any information
44 required by the Administrative Office of the Courts to identify the individual
45 and a search of the confidential record of expunctions maintained by the
46 Administrative Office of the Courts. The application shall be forwarded to
47 the Department of Public Safety and to the Administrative Office of the
48 Courts, which shall conduct the searches and report their findings to the
49 court.

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

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

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

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

22"

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

24 **"§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of**
25 **conviction of certain gang offenses.**

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

- 37 (1) An affidavit by the petitioner that the petitioner has been of good behavior
38 (i) during the period of probation since the decision to defer further
39 proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)
40 during the two-year period since the date of conviction of the offense in
41 question, whichever applies, and has not been convicted of any felony or
42 misdemeanor other than a traffic violation or a misdemeanor boating
43 violation under the laws of the United States or the laws of this State or any
44 other state.
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 the petitioner lives, and that the
48 petitioner's character and reputation are good.
49 (3) If the petition is filed subsequent to conviction of the offense in question, a
50 statement that the petition is a motion in the cause in the case wherein the
51 petitioner was convicted.

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

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

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 or during the two-year period after conviction.

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

40"

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

42 "**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
43 **time of the offense of certain drug offenses.**

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

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

1 on the offense in question and has not been convicted of any felony or
2 misdemeanor other than a traffic violation or a misdemeanor boating
3 violation under the laws of the United States or the laws of this State or any
4 other state;

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

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

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

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
22 probationary period deemed desirable.

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

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

36 ...

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

1 subsequent convictions of Article 5 of Chapter 90 of the General Statutes. Cancellation and
2 expunction under this subsection may occur only once with respect to any person. Disposition
3 of a case under this subsection at the district court division of the General Court of Justice shall
4 be final for the purpose of appeal.

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

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

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

39"

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

41 "**§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
42 **time of the offense of certain toxic vapors offenses.**

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

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

1 misdemeanor other than a traffic violation or a misdemeanor boating
2 violation under the laws of the United States or the laws of this State or any
3 other state;

4 (2) Verified affidavits by two persons who are not related to the petitioner or to
5 each other by blood or marriage, that they know the character and reputation
6 of the petitioner in the community in which the petitioner lives, and that his
7 or her character and reputation are good;

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

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

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

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

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

34 ...

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

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

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

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

29"

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

31 **"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
32 **the time of the commission of a nonviolent felony.**

33 (a) For purposes of this section, the term "nonviolent felony" means any felony except
34 the following:

- 35 (1) A Class A through G felony.
- 36 (2) A felony that includes assault as an essential element of the offense.
- 37 (3) A felony that is an offense requiring registration pursuant to Article 27A of
38 Chapter 14 of the General Statutes, whether or not the person is currently
39 required to register.
- 40 (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
- 41 (5) Any felony offense under the following sex-related or stalking offenses:
42 G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18,
43 14-277.3, 14-277.3A, 14-321.1.
- 44 (6) Any felony offense in Chapter 90 of the General Statutes where the offense
45 involves methamphetamines, heroin, or possession with intent to sell or
46 deliver or sell and deliver cocaine; except that if a prayer for judgment
47 continued has been entered for an offense classified as either a Class G, H,
48 or I felony, the prayer for judgment continued shall be subject to expunction
49 under the procedures in this section.

- 1 (7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any
2 felony offense for which punishment was determined pursuant to
3 G.S. 14-3(c).
- 4 (8) A felony offense under G.S. 14-401.16.
- 5 (9) Any felony offense in which a commercial motor vehicle was used in the
6 commission of the offense.
- 7 (10) An offense involving impaired driving as defined in G.S. 20-4.01(24a).

8 ...
9 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
10 commission of the offense and has not previously been convicted of any felony or
11 misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws
12 of the United States or the laws of this State or any other state pleads guilty to or is guilty of a
13 nonviolent felony, the person may file a petition in the court where the person was convicted
14 for expunction of the nonviolent felony from the person's criminal record. The petition shall not
15 be filed earlier than four years after the date of the conviction or when any active sentence,
16 period of probation, and post-release supervision has been served, whichever occurs later. The
17 person shall also perform at least 100 hours of community service, preferably related to the
18 conviction, before filing a petition for expunction under this section. The petition shall contain
19 the following:

- 20 (1) An affidavit by the petitioner that the petitioner has been of good moral
21 character since the date of conviction of the nonviolent felony in question
22 and has not been convicted of any other felony or any misdemeanor other
23 than a traffic violation or a misdemeanor boating violation under the laws of
24 the United States or the laws of this State or any other state.
- 25 (2) Verified affidavits of two persons who are not related to the petitioner or to
26 each other by blood or marriage, that they know the character and reputation
27 of the petitioner in the community in which the petitioner lives and that the
28 petitioner's character and reputation are good.
- 29 (3) A statement that the petition is a motion in the cause in the case wherein the
30 petitioner was convicted.
- 31 (4) An application on a form approved by the Administrative Office of the
32 Courts requesting and authorizing (i) a State and national criminal history
33 record check by the Department of Public Safety using any information
34 required by the Administrative Office of the Courts to identify the
35 individual; (ii) a search by the Department of Public Safety for any
36 outstanding warrants or pending criminal cases; and (iii) a search of the
37 confidential record of expunctions maintained by the Administrative Office
38 of the Courts. The application shall be forwarded to the Department of
39 Public Safety and to the Administrative Office of the Courts, which shall
40 conduct the searches and report their findings to the court.
- 41 (5) An affidavit by the petitioner that no restitution orders or civil judgments
42 representing amounts ordered for restitution entered against the petitioner
43 are outstanding.
- 44 (6) An affidavit by the petitioner that the petitioner has performed at least 100
45 hours of community service since the conviction for the nonviolent felony.
46 The affidavit shall include a list of the community services performed, a list
47 of the recipients of the services, and a detailed description of those services.
- 48 (7) An affidavit by the petitioner that the petitioner possesses a high school
49 diploma, a high school graduation equivalency certificate, or a General
50 Education Development degree.

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 30 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. The
4 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
5 victim of the request for expunction prior to the date of the hearing.

6 ...

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

- 10 (1) The petitioner has remained of good moral character and has been free of
11 conviction of any felony or misdemeanor, other than a traffic or boating
12 violation, for four years from the date of conviction of the nonviolent felony
13 in question or any active sentence, period of probation, or post-release
14 supervision has been served, whichever is later.
- 15 (2) The petitioner has not previously been convicted of any felony or
16 misdemeanor other than a traffic violation or a misdemeanor boating
17 violation under the laws of the United States or the laws of this State or any
18 other state.
- 19 (3) The petitioner has no outstanding warrants or pending criminal cases.
- 20 (4) The petitioner has no outstanding restitution orders or civil judgments
21 representing amounts ordered for restitution entered against the petitioner.
- 22 (5) The petitioner was less than 18 years old at the time of the commission of
23 the offense in question.
- 24 (6) The petitioner has performed at least 100 hours of community service since
25 the time of the conviction and possesses a high school diploma, a high
26 school graduation equivalency certificate, or a General Education
27 Development degree.
- 28 (7) The search of the confidential records of expunctions conducted by the
29 Administrative Office of the Courts shows that the petitioner has not been
30 previously granted an expunction.

31"

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

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

- 36 (1) The criteria set out in subsection (b) of this section are satisfied.
- 37 (2) The petitioner has remained of good moral character and has been free of
38 conviction of any felony or misdemeanor, other than a traffic ~~violation,~~
39 violation or a misdemeanor boating violation, since the date of conviction of
40 the prostitution offense in question.
- 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 search of the confidential records of expunctions conducted by the
45 Administrative Office of the Courts shows that the petitioner has not been
46 previously granted an expunction, other than an expunction for a prostitution
47 offense."

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

49 **"§ 14-50.30. Expunction of records.**

50 Any person who has not previously been convicted of any felony or misdemeanor other
51 than a traffic violation or a misdemeanor boating violation under the laws of the United States

1 or the laws of this State or any other state, may, if the offense was committed before the person
2 attained the age of 18 years, be eligible to apply for expunction of certain offenses under this
3 Article pursuant to G.S. 15A-145.1."

4 **SECTION 9.** Article 5 of Chapter 15A of the General Statutes is amended by
5 adding a new section to read:

6 "**§ 15A-145.7. Expunction of certain youth drug offenses.**

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

8 (1) Drug free. – Free from drug dependency and any unlawful use of controlled
9 substances.

10 (2) Youthful drug offense. – A conviction of any violation of G.S. 90-95(a)(3)
11 or G.S. 90-113.22 where the defendant had not yet attained the age of 25
12 years at the time of the commission of the offense.

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

18 (c) A person may file a petition in the court where the person was convicted for
19 expunction of up to two youthful drug offense convictions from the person's criminal record if
20 the person has no misdemeanor or felony convictions, other than a traffic or a misdemeanor
21 boating violation, for a period of at least 10 years prior to the date that the petition is filed;
22 convicted of a youthful drug offense that is eligible pursuant to subsection (a) of this section;
23 and provides proof pursuant to subsection (d) of this section that the person is drug free and has
24 been drug free for a period of at least one year prior to the date that the petition is filed. The
25 petition shall not be filed earlier than (i) 10 years after the date of the conviction or (ii) when
26 any active sentence, period of probation, and post-release supervision has been served,
27 whichever occurs later. If the petition is to expunge two youthful drug offense convictions, the
28 petition shall not be filed earlier than 10 years after the date of the last conviction or when any
29 active sentence, period of probation, and post-release supervision has been served for the last
30 conviction, whichever occurs later.

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

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

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

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 the petitioner lives, and that the
48 petitioner's character 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) 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 history record check by the Department of Public Safety using any
4 information required by the Administrative Office of the Courts to identify
5 the individual, a search by the Department of Public Safety for any
6 outstanding warrants on pending criminal cases, and a search of the
7 confidential record of expunctions maintained by the Administrative Office
8 of the Courts. The application shall be forwarded to the Department of
9 Public Safety and to the Administrative Office of the Courts, which shall
10 conduct the searches and report their findings to the court.
- 11 (5) An affidavit by the petitioner that no restitution orders or civil judgments
12 representing amounts ordered for restitution entered against the petitioner
13 are outstanding.
- 14 (6) Documentation in a format approved by the Administrative Office of the
15 Courts establishing that the petitioner is drug free and has been drug free for
16 a period of at least one year prior to the date of the filing of the petition.

17 Upon filing of the petition, the petition shall be served upon the district attorney of the court
18 wherein the case resulting in conviction was heard. The district attorney shall have 30 days
19 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
20 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
21 additional 30 days to file objection to the petition. The district attorney shall make his or her
22 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
23 to the date of the hearing.

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

29 (f) If the court after hearing finds that the petitioner has not previously been granted an
30 expunction, the petitioner is drug free; the petitioner is of good moral character; the petitioner
31 has no outstanding warrants or pending criminal cases; the petitioner has no felony or
32 misdemeanor convictions other than a traffic violation, for a period of 10 years prior to the
33 filing of the petition; the petitioner has no outstanding restitution orders or civil judgments
34 representing amounts ordered for restitution entered against the petitioner; the petition for
35 expunction of a youthful drug offense conviction was filed at least 10 years after the date of
36 conviction or, if the petition for expunction is for two youthful drug offense convictions, the
37 petition was filed at least 10 years after the date of the later conviction; and the petitioner has
38 completed any sentence received for the conviction, it may order that such person be restored,
39 in the contemplation of the law, to the status the person occupied before such arrest or
40 indictment or information. If the court denies the petition, the order shall include a finding as to
41 the reason for the denial.

42 (g) No person as to whom an order has been entered pursuant to this section shall be
43 held thereafter under any provision of any law to be guilty of perjury or otherwise giving a
44 false statement by reason of that person's failure to recite or acknowledge the arrest, indictment,
45 information, trial, or conviction. Persons pursuing certification under the provisions of Chapter
46 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the
47 certifying Commission, regardless of whether or not the convictions were expunged pursuant to
48 the provisions of this section. Persons required by State law to obtain a criminal history record
49 check on a prospective employee shall not be deemed to have knowledge of any convictions
50 expunged under this section.

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

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

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

20 **SECTION 10.** G.S. 15A-146 is amended by adding a new subsection to read:

21 "(a2) Notwithstanding subsection (a) of this section, a person who has previously been
22 granted an expunction under this section and is subsequently found not guilty or not
23 responsible, may apply to have the subsequent finding expunged. The court shall hold a hearing
24 on the application. If the court finds (i) that the person had not previously received an
25 expungement under this subsection, (ii) that the person had not previously received an
26 expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or
27 15A-145.5, and (iii) that the person had not previously been convicted of any felony under the
28 laws of the United States, this State, or any other state, the court shall order the expunction of
29 the finding of not guilty or not responsible. No person as to whom such an order has been
30 entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be
31 guilty of otherwise giving a false statement or response to any inquiry made for any purpose,
32 by reason of his failure to recite or acknowledge any expunged entries concerning apprehension
33 or trial."

34 **SECTION 11.** This act becomes effective December 1, 2015, and applies to
35 petitions for expunction filed on or after that date.