

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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HOUSE BILL 1329
Committee Substitute Favorable 4/29/09

Short Title: Consolidate Expunction Statutes.

(Public)

Sponsors:

Referred to:

April 9, 2009

1 A BILL TO BE ENTITLED
2 AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF
3 RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES.

4 The General Assembly of North Carolina enacts:

5 **SECTION 1.** Article 5 of Chapter 15A of the General Statutes is amended by
6 adding a new section to read:

7 "**§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of**
8 **conviction of certain gang offenses.**

9 (a) Whenever any person who has not yet attained the age of 18 years and has not
10 previously been convicted of any felony or misdemeanor other than a traffic violation under the
11 laws of the United States or the laws of this State or any other state pleads guilty to or is guilty
12 of (i) a Class H felony under Article 13A of Chapter 14 of the General Statutes or (ii) an
13 enhanced offense under G.S. 14-50.22, the person may file a petition in the court where the
14 person was convicted for expunction of the offense from the person's criminal record. Except as
15 provided in G.S. 14-50.29 upon discharge and dismissal, the petition cannot be filed earlier
16 than (i) two years after the date of the conviction or (ii) the completion of any period of
17 probation, whichever occurs later. The petition shall contain, but not be limited to, the
18 following:

- 19 (1) An affidavit by the petitioner that the petitioner has been of good behavior
20 (i) during the period of probation since the decision to defer further
21 proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)
22 during the two-year period since the date of conviction of the offense in
23 question, whichever applies, and has not been convicted of any felony or
24 misdemeanor other than a traffic violation under the laws of the United
25 States or the laws of this State or any other state.
- 26 (2) Verified affidavits of two persons who are not related to the petitioner or to
27 each other by blood or marriage, that they know the character and reputation
28 of the petitioner in the community in which the petitioner lives, and that the
29 petitioner's character and reputation are good.
- 30 (3) If the petition is filed subsequent to conviction of the offense in question, a
31 statement that the petition is a motion in the cause in the case wherein the
32 petitioner was convicted.
- 33 (4) Affidavits of the clerk of superior court, chief of police, where appropriate,
34 and sheriff of the county in which the petitioner was convicted and, if
35 different, the county of which the petitioner is a resident, showing that the
36 petitioner has not been convicted of a felony or misdemeanor other than a
37 traffic violation under the laws of this State (i) during the period of probation



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1 since the decision to defer further proceedings on the offense in question
2 pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the
3 offense in question or during the two-year period following that conviction,
4 whichever applies.

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

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

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

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

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

35 **SECTION 2.** Article 5 of Chapter 15A of the General Statutes is amended by
36 adding a new section to read:

37 **"§ 15A-145.2. Expunction of records for first offenders under the age of 21 at the time of**
38 **the offense of certain drug offenses.**

39 (a) Whenever a person is discharged, and the proceedings against the person dismissed,
40 pursuant to G.S. 90-96(a), and the person was not over 21 years of age at the time of the
41 offense, the person may apply to the court for an order to expunge from all official records
42 (other than the confidential file to be retained by the Administrative Office of the Courts under
43 G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of
44 guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the
45 application the following:

46 (1) An affidavit by the applicant that he has been of good behavior during the
47 period of probation since the decision to defer further proceedings on the
48 offense in question and has not been convicted of any felony or
49 misdemeanor other than a traffic violation under the laws of the United
50 States or the laws of this State or any other state;

- 1 (2) Verified affidavits by two persons who are not related to the applicant or to
2 each other by blood or marriage, that they know the character and reputation
3 of the petitioner in the community in which he lives, and that his character
4 and reputation are good;
- 5 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
6 and sheriff of the county in which the petitioner was convicted, and, if
7 different, the county of which the petitioner is a resident, showing that the
8 applicant has not been convicted of a felony or misdemeanor other than a
9 traffic violation under the laws of this State at any time prior to the
10 conviction for the offense in question or during the period of probation
11 following the decision to defer further proceedings on the offense in
12 question.

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

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

24 The court shall also order that said conviction and the records relating thereto be expunged
25 from the records of the court and direct all law enforcement agencies bearing records of the
26 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
27 order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff,
28 chief of police, or other arresting agency, as appropriate, shall forward such order to the State
29 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
30 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
31 Investigation.

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

45 (c) Whenever any person who has not previously been convicted of an offense under
46 Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any
47 state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the
48 General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General
49 Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of
50 Chapter 90 of the General Statutes by possessing a controlled substance included within
51 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing

1 drug paraphernalia as prohibited by G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) by
2 possessing less than one gram of cocaine, the court may, upon application of the person not
3 sooner than 12 months after conviction, order cancellation of the judgment of conviction and
4 expunction of the records of his arrest, indictment or information, trial, and conviction. A
5 conviction in which the judgment of conviction has been canceled and the records expunged
6 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
7 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
8 a crime, including the additional penalties imposed for second or subsequent convictions of
9 Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this
10 subsection may occur only once with respect to any person. Disposition of a case under this
11 subsection at the district court division of the General Court of Justice shall be final for the
12 purpose of appeal.

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

18 The judge to whom the petition is presented is authorized to call upon a probation officer
19 for additional investigation or verification of the petitioner's conduct since conviction. If the
20 court determines that the petitioner was convicted of (i) a misdemeanor under Article 5 of
21 Chapter 90 of the General Statutes for possessing a controlled substance included within
22 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or for possessing
23 drug paraphernalia as prohibited in G.S. 90-113.21 or (ii) a felony under G.S. 90-95(a)(3) for
24 possession of less than one gram of cocaine, that he was not over 21 years of age at the time of
25 the offense, that he has been of good behavior since his conviction, that he has successfully
26 completed a drug education program approved for this purpose by the Department of Health
27 and Human Services, and that he has not been convicted of a felony or misdemeanor other than
28 a traffic violation under the laws of this State at any time prior to or since the conviction for the
29 offense in question, it shall enter an order of expunction of the petitioner's court record. The
30 effect of such order shall be to restore the petitioner in the contemplation of the law to the
31 status he occupied before arrest or indictment or information or conviction. No person as to
32 whom such order was entered shall be held thereafter under any provision of any law to be
33 guilty of perjury or otherwise giving a false statement by reason of his failures to recite or
34 acknowledge such arrest, or indictment or information, or conviction, or trial in response to any
35 inquiry made of him for any purpose. The judge may waive the condition that the petitioner
36 attend the drug education school if the judge makes a specific finding that there was no drug
37 education school within a reasonable distance of the defendant's residence or that there were
38 specific extenuating circumstances which made it likely that the petitioner would not benefit
39 from the program of instruction.

40 The court shall also order that all law enforcement agencies bearing records of the
41 conviction and records relating thereto to expunge their records of the conviction. The clerk
42 shall forward a certified copy of the order to the sheriff, chief of police, or other arresting
43 agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of
44 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
45 Investigation shall forward the court order in like manner to the Federal Bureau of
46 Investigation.

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

1 have been canceled and expunged. The information contained in the file shall be disclosed only
2 to judges of the General Court of Justice of North Carolina for the purpose of ascertaining
3 whether any person charged with an offense under Article 5 of Chapter 90 of the General
4 Statutes has been previously granted cancellation and expunction of a judgment of conviction
5 pursuant to the terms of this subsection.

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

10 **SECTION 3.** Article 5 of Chapter 15A of the General Statutes is amended by
11 adding a new section to read:

12 **"§ 15A-145.3. Expunction of records for first offenders under the age of 21 at the time of**
13 **the offense of certain toxic vapors offenses.**

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

- 21 (1) An affidavit by the applicant that he has been of good behavior during the
22 period of probation since the decision to defer further proceedings on the
23 misdemeanor in question and has not been convicted of any felony or
24 misdemeanor other than a traffic violation under the laws of the United
25 States or the laws of this State or any other state;
- 26 (2) Verified affidavits by two persons who are not related to the applicant or to
27 each other by blood or marriage, that they know the character and reputation
28 of the petitioner in the community in which he lives, and that his character
29 and reputation are good;
- 30 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
31 and sheriff of the county in which the petitioner was convicted, and, if
32 different, the county of which the petitioner is a resident, showing that the
33 applicant has not been convicted of a felony or misdemeanor other than a
34 traffic violation under the laws of this State at any time prior to the
35 conviction for the misdemeanor in question or during the period of probation
36 following the decision to defer further proceedings on the misdemeanor in
37 question.

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

41 If the court determines, after hearing, that such person was discharged and the proceedings
42 against him dismissed and that he was not over 21 years of age at the time of the offense, it
43 shall enter such order. The effect of such order shall be to restore such person in the
44 contemplation of the law to the status he occupied before such arrest or indictment or
45 information. No person as to whom such order was entered shall be held thereafter under any
46 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of
47 his failures to recite or acknowledge such arrest, or indictment or information, or trial in
48 response to any inquiry made of him for any purpose.

49 The court shall also order that said conviction and the records relating thereto be expunged
50 from the records of the court and direct all law enforcement agencies bearing records of the
51 same to expunge their records of the conviction. The clerk shall forward a certified copy of the

1 order to the sheriff, chief of police, or other arresting agency, as appropriate, and the sheriff,
2 chief of police, or other arresting agency, as appropriate, shall forward such order to the State
3 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
4 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
5 Investigation.

6 (b) Whenever any person is charged with a misdemeanor under Article 5A of Chapter
7 90 of the General Statutes by possessing a controlled substance included within Schedules II
8 through VI of Article 5 of Chapter 90 of the General Statutes, or by possessing drug
9 paraphernalia as prohibited by G.S. 90-113.21, upon dismissal by the State of the charges
10 against him or upon entry of a nolle prosequi or upon a finding of not guilty or other
11 adjudication of innocence, such person may apply to the court for an order to expunge from all
12 official records all recordation relating to his arrest, indictment or information, and trial. If the
13 court determines, after hearing that such person was not over 21 years of age at the time any of
14 the proceedings against him occurred, it shall enter such order. No person as to whom such
15 order has been entered shall be held thereafter under any provision of any law to be guilty of
16 perjury or otherwise giving a false statement by reason of his failures to recite or acknowledge
17 such arrest, or indictment or information, or trial in response to any inquiry made of him for
18 any purpose.

19 (c) Whenever any person who has not previously been convicted of an offense under
20 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States
21 or any state relating to controlled substances included in any schedule of Article 5 of Chapter
22 90 of the General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the
23 General Statutes pleads guilty to or has been found guilty of a misdemeanor under Article 5A
24 of Chapter 90 of the General Statutes, the court may, upon application of the person not sooner
25 than 12 months after conviction, order cancellation of the judgment of conviction and
26 expunction of the records of his arrest, indictment or information, trial, and conviction. A
27 conviction in which the judgment of conviction has been cancelled and the records expunged
28 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this
29 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of
30 a crime, including the additional penalties imposed for second or subsequent convictions of
31 violation of Article 5A of Chapter 90 of the General Statutes. Cancellation and expunction
32 under this subsection may occur only once with respect to any person. Disposition of a case
33 under this subsection at the district court division of the General Court of Justice shall be final
34 for the purpose of appeal.

35 The granting of an application filed under this subsection shall cause the issue of an order to
36 expunge from all official records (other than the confidential file to be retained by the
37 Administrative Office of the Courts under G.S. 90-113.14(c)) all recordation relating to his
38 arrest, indictment or information, trial, finding of guilty, judgment of conviction, cancellation
39 of the judgment, and expunction of records pursuant to this subsection.

40 The judge to whom the petition is presented is authorized to call upon a probation officer
41 for additional investigation or verification of the petitioner's conduct since conviction. If the
42 court determines that the petitioner was convicted of a misdemeanor under Article 5A of
43 Chapter 90 of the General Statutes, or for possessing drug paraphernalia as prohibited by
44 G.S. 90-113.21, that he was not over 21 years of age at the time of the offense, that he has been
45 of good behavior since his conviction, that he has successfully completed a drug education
46 program approved for this purpose by the Department of Health and Human Services, and that
47 he has not been convicted of a felony or misdemeanor other than a traffic violation under the
48 laws of this State at any time prior to or since the conviction for the misdemeanor in question, it
49 shall enter an order of expunction of the petitioner's court record. The effect of such order shall
50 be to restore the petitioner in the contemplation of the law to the status he occupied before such
51 arrest or indictment or information or conviction. No person as to whom such order was entered

1 shall be held thereafter under any provision of any law to be guilty of perjury or otherwise
2 giving a false statement by reason of his failures to recite or acknowledge such arrest, or
3 indictment or information, or conviction, or trial in response to any inquiry made of him for any
4 purpose. The judge may waive the condition that the petitioner attend the drug education school
5 if the judge makes a specific finding that there was no drug education school within a
6 reasonable distance of the defendant's residence or that there were specific extenuating
7 circumstances which made it likely that the petitioner would not benefit from the program of
8 instruction.

9 The court shall also order that all law enforcement agencies bearing records of the
10 conviction and records relating thereto to expunge their records of the conviction. The clerk
11 shall forward a certified copy of the order to the sheriff, chief of police, or other arresting
12 agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of
13 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
14 Investigation shall forward the court order in like manner to the Federal Bureau of
15 Investigation.

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

25 **SECTION 4.** G.S. 14-50.30 reads as rewritten:

26 **"§ 14-50.30. Expunction of records.**

27 (a) ~~Whenever any~~ Any person who has not yet attained the age of 18 years and has not
28 previously been convicted of any felony or misdemeanor other than a traffic violation under the
29 laws of the United States or the laws of this State or any other state, may be eligible to apply
30 for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1. ~~pleads guilty~~
31 ~~to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under~~
32 ~~G.S. 14-50.22, the person may file a petition in the court where the person was convicted for~~
33 ~~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, under the laws of the United~~
43 ~~States or the laws of this State or any other state.~~
44 (2) ~~Verified affidavits of two persons who are not related to the petitioner or to~~
45 ~~each other by blood or marriage, that they know the character and reputation~~
46 ~~of the petitioner in the community in which the petitioner lives, and that the~~
47 ~~petitioner's character and reputation are good.~~
48 (3) ~~If the petition is filed subsequent to conviction of the offense in question, a~~
49 ~~statement that the petition is a motion in the cause in the case wherein the~~
50 ~~petitioner was convicted.~~

- 1 (4) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~
2 ~~and sheriff of the county in which the petitioner was convicted and, if~~
3 ~~different, the county of which the petitioner is a resident, showing that the~~
4 ~~petitioner has not been convicted of a felony or misdemeanor other than a~~
5 ~~traffic violation under the laws of this State (i) during the period of probation~~
6 ~~since the decision to defer further proceedings on the offense in question~~
7 ~~pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the~~
8 ~~offense in question or during the two year period following that conviction,~~
9 ~~whichever applies.~~
- 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 the petitioner has remained of good behavior~~
20 ~~and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two~~
21 ~~years from the date of conviction of the offense in question, the petitioner has no outstanding~~
22 ~~restitution orders or civil judgments representing amounts ordered for restitution entered~~
23 ~~against him, and the petitioner had not attained the age of 18 years at the time of the conviction~~
24 ~~in question, it shall order that such person be restored, in the contemplation of the law, to the~~
25 ~~status occupied by the petitioner before such arrest or indictment or information. No person as~~
26 ~~to whom such order has been entered shall be held thereafter under any provision of any laws~~
27 ~~to be guilty of perjury or otherwise giving a false statement by reason of the person's failure to~~
28 ~~recite or acknowledge such arrest, or indictment, information, or trial, or response to any~~
29 ~~inquiry made of the person for any purpose. The court shall also order that the said conviction~~
30 ~~be expunged from the records of the court, and direct all law enforcement agencies bearing~~
31 ~~record of the same to expunge their records of the conviction as the result of a criminal charge.~~
32 ~~The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other~~
33 ~~arresting agency. The sheriff, chief, or head of such other arresting agency shall then transmit~~
34 ~~the copy of the order with a form supplied by the State Bureau of Investigation to the State~~
35 ~~Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the~~
36 ~~Federal Bureau of Investigation.~~

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

40 **SECTION 5.** G.S. 90-96 reads as rewritten:

41 "**§ 90-96. Conditional discharge and expunction of records for first offense.**

42 (a) Whenever any person who has not previously been convicted of any offense under
43 this Article or under any statute of the United States or any state relating to those substances
44 included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of
45 Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by
46 possessing a controlled substance included within Schedules II through VI of this Article or by
47 possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony under
48 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without entering a
49 judgment of guilt and with the consent of such person, defer further proceedings and place him
50 on probation upon such reasonable terms and conditions as it may require. Notwithstanding the
51 provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under

1 this section for an offense under this Article for which the prescribed punishment includes only
2 a fine. To fulfill the terms and conditions of probation the court may allow the defendant to
3 participate in a drug education program approved for this purpose by the Department of Health
4 and Human Services. Upon violation of a term or condition, the court may enter an
5 adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and
6 conditions, the court shall discharge such person and dismiss the proceedings against him.
7 Discharge and dismissal under this section shall be without court adjudication of guilt and shall
8 not be deemed a conviction for purposes of this section or for purposes of disqualifications or
9 disabilities imposed by law upon conviction of a crime including the additional penalties
10 imposed for second or subsequent convictions under this Article. Discharge and dismissal
11 under this section or G.S. 90-113.14 may occur only once with respect to any person.
12 Disposition of a case to determine discharge and dismissal under this section at the district
13 court division of the General Court of Justice shall be final for the purpose of appeal. Prior to
14 taking any action to discharge and dismiss under this section the court shall make a finding that
15 the defendant has no record of previous convictions under the "North Carolina Controlled
16 Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A,
17 Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

18 (a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or
19 G.S. 90-113.21 and subject to the provisions of this subsection (a1), the court may place
20 defendant on probation under this section for an offense under this Article including an offense
21 for which the prescribed punishment includes only a fine. The probation, if imposed, shall be
22 for not less than one year and shall contain a minimum condition that the defendant who was
23 found guilty or pleads guilty enroll in and successfully complete, within 150 days of the date of
24 the imposition of said probation, the program of instruction at the drug education school
25 approved by the Department of Health and Human Services pursuant to G.S. 90-96.01. The
26 court may impose probation that does not contain a condition that defendant successfully
27 complete the program of instruction at a drug education school if:

- 28 (1) There is no drug education school within a reasonable distance of the
29 defendant's residence; or
- 30 (2) There are specific, extenuating circumstances which make it likely that
31 defendant will not benefit from the program of instruction.

32 The court shall enter such specific findings in the record; provided that in the case of
33 subdivision (2) above, such findings shall include the specific, extenuating circumstances
34 which make it likely that the defendant will not benefit from the program of instruction.

35 For the purposes of determining whether the conviction is a first conviction or whether a
36 person has already had discharge and dismissal, no prior offense occurring more than seven
37 years before the date of the current offense shall be considered. In addition, convictions for
38 violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or
39 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

40 Failure to complete successfully an approved program of instruction at a drug education
41 school shall constitute grounds to revoke probation and deny application for expunction of all
42 recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and
43 dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase
44 "failure to complete successfully the prescribed program of instruction at a drug education
45 school" includes failure to attend scheduled classes without a valid excuse, failure to complete
46 the course within 150 days of imposition of probation, willful failure to pay the required fee for
47 the course, or any other manner in which the person fails to complete the course successfully.
48 The instructor of the course to which a person is assigned shall report any failure of a person to
49 complete successfully the program of instruction to the court which imposed probation. Upon
50 receipt of the instructor's report that the person failed to complete the program successfully, the
51 court shall revoke probation and/or deny application for expunction of all recordation of

1 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and
2 discharge pursuant to this section. A person may obtain a hearing before the court of original
3 jurisdiction prior to revocation of probation or denial of application for expunction.

4 This subsection is supplemental and in addition to existing law and shall not be construed
5 so as to repeal any existing provision contained in the General Statutes of North Carolina.

6 (b) Upon the ~~dismissal~~discharge of such person, and ~~discharge~~dismissal of the
7 proceedings against him under subsection (a) of this section, such person, if he were not over
8 21 years of age at the time of the offense, may be eligible to apply for expunction of certain
9 records relating to the offense pursuant to G.S. 15A-145.2(a).~~may apply to the court for an~~
10 ~~order to expunge from all official records (other than the confidential file to be retained by the~~
11 ~~Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest,~~
12 ~~indictment or information, trial, finding of guilty, and dismissal and discharge pursuant to this~~
13 ~~section. The applicant shall attach to the application the following:~~

- 14 (1) ~~An affidavit by the applicant that he has been of good behavior during the~~
15 ~~period of probation since the decision to defer further proceedings on the~~
16 ~~offense in question and has not been convicted of any felony, or~~
17 ~~misdemeanor, other than a traffic violation, under the laws of the United~~
18 ~~States or the laws of this State or any other state;~~
- 19 (2) ~~Verified affidavits by two persons who are not related to the applicant or to~~
20 ~~each other by blood or marriage, that they know the character and reputation~~
21 ~~of the petitioner in the community in which he lives, and that his character~~
22 ~~and reputation are good;~~
- 23 (3) ~~Affidavits of the clerk of superior court, chief of police, where appropriate,~~
24 ~~and sheriff of the county in which the petitioner was convicted, and, if~~
25 ~~different, the county of which the petitioner is a resident, showing that the~~
26 ~~applicant has not been convicted of a felony or misdemeanor other than a~~
27 ~~traffic violation under the laws of this State at any time prior to the~~
28 ~~conviction for the offense in question or during the period of probation~~
29 ~~following the decision to defer further proceedings on the offense in~~
30 ~~question.~~

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

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

42 ~~The court shall also order that said conviction and the records relating thereto be expunged~~
43 ~~from the records of the court, and direct all law enforcement agencies bearing records of the~~
44 ~~same to expunge their records of the conviction. The clerk shall forward a certified copy of the~~
45 ~~order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,~~
46 ~~chief of police or other arresting agency, as appropriate, shall forward such order to the State~~
47 ~~Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State~~
48 ~~Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of~~
49 ~~Investigation.~~

50 (c) The clerk of superior court in each county in North Carolina shall, as soon as
51 practicable after each term of court in his county, file with the Administrative Office of the

1 Courts the names of those persons granted a conditional discharge under the provisions of this
2 Article, and the Administrative Office of the Courts shall maintain a confidential file containing
3 the names of persons granted conditional discharges. The information contained in the file shall
4 be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of
5 ascertaining whether any person charged with an offense under this Article has been previously
6 granted a conditional discharge.

7 (d) Whenever any person is charged with a misdemeanor under this Article by
8 possessing a controlled substance included within Schedules II through VI of this Article or a
9 felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by
10 the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not
11 guilty or other adjudication of innocence, the person may be eligible to apply for expunction of
12 certain records relating to the offense pursuant to G.S. 15A-145.2(b).~~such person may apply to~~
13 ~~the court for an order to expunge from all official records all recordation relating to his arrest,~~
14 ~~indictment or information, or trial. If the court determines, after hearing that such person was~~
15 ~~not over 21 years of age at the time any of the proceedings against him occurred, it shall enter~~
16 ~~such order. No person as to whom such order has been entered shall be held thereafter under~~
17 ~~any provision of any law to be guilty of perjury or otherwise giving a false statement by reason~~
18 ~~of his failures to recite or acknowledge such arrest, or indictment or information, or trial in~~
19 ~~response to any inquiry made of him for any purpose.~~

20 (e) Whenever any person who has not previously been convicted of an offense under
21 this Article or under any statute of the United States or any state relating to controlled
22 substances included in any schedule of this Article or to that paraphernalia included in Article
23 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this
24 Article by possessing a controlled substance included within Schedules II through VI of this
25 Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony
26 under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the person may be eligible
27 to apply for cancellation of the judgment and expunction of certain records related to the
28 offense pursuant to G.S. 15A-145.2(c).~~the court may, upon application of the person not sooner~~
29 ~~than 12 months after conviction, order cancellation of the judgment of conviction and~~
30 ~~expunction of the records of his arrest, indictment, or information, trial and conviction. A~~
31 ~~conviction in which the judgment of conviction has been canceled and the records expunged~~
32 ~~pursuant to this section shall not be thereafter deemed a conviction for purposes of this section~~
33 ~~or for purposes of disqualifications or liabilities imposed by law upon conviction of a crime~~
34 ~~including the additional penalties imposed for second or subsequent convictions of this Article.~~
35 ~~Cancellation and expunction under this section may occur only once with respect to any person.~~
36 ~~Disposition of a case under this section at the district court division of the General Court of~~
37 ~~Justice shall be final for the purpose of appeal.~~

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

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

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

13 ~~The court shall also order that all law enforcement agencies bearing records of the~~
14 ~~conviction and records relating thereto to expunge their records of the conviction. The clerk~~
15 ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting~~
16 ~~agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of~~
17 ~~Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of~~
18 ~~Investigation shall forward the court order in like manner to the Federal Bureau of~~
19 ~~Investigation.~~

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

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

33 **SECTION 6.** G.S. 90-113.14 reads as rewritten:

34 **"§ 90-113.14. Conditional discharge and expunction of records for first offenses.**

35 (a) Whenever any person who has not previously been convicted of any offense under
36 this Article or under any statute of the United States or any state relating to those substances
37 included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or
38 possessing any substance having the property of releasing toxic vapors or fumes in violation of
39 Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the
40 consent of such person, defer further proceedings and place him on probation upon such
41 reasonable terms and conditions as it may require. Notwithstanding the provisions of
42 G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for
43 an offense under this Article for which the prescribed punishment includes only a fine. To
44 fulfill the terms and conditions of probation the court may allow the defendant to participate in
45 a drug education program approved for this purpose by the Department of Health and Human
46 Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and
47 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall
48 discharge such person and dismiss the proceedings against him. Discharge and dismissal under
49 this section shall be without court adjudication of guilt and shall not be deemed a conviction for
50 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon
51 conviction of a crime including the additional penalties imposed for second or subsequent

1 convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once
2 with respect to any person. Disposition of a case to determine discharge and dismissal under
3 this section at the district court division of the General Court of Justice shall be final for the
4 purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court
5 shall make a finding that the defendant has no record of previous convictions under the "North
6 Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled
7 Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter
8 90.

9 (a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or
10 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant
11 on probation under this section for an offense under this Article including an offense for which
12 the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less
13 than one year and shall contain a minimum condition that the defendant who was found guilty
14 or pleads guilty enroll in and successfully complete, within 150 days of the date of the
15 imposition of said probation, the program of instruction at the drug education school approved
16 by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may
17 impose probation that does not contain a condition that defendant successfully complete the
18 program of instruction at a drug education school if:

- 19 (1) There is no drug education school within a reasonable distance of the
20 defendant's residence; or
- 21 (2) There are specific, extenuating circumstances which make it likely that
22 defendant will not benefit from the program of instruction.

23 The court shall enter such specific findings in the record; provided that in the case of subsection
24 (2) above, such findings shall include the specific, extenuating circumstances which make it
25 likely that the defendant will not benefit from the program of instruction.

26 For the purpose of determining whether the conviction is a first conviction or whether a
27 person has already had discharge and dismissal, no prior offense occurring more than seven
28 years before the date of the current offense shall be considered. In addition, convictions for
29 violations of a provision of G.S. 90-95(a)(1) or 90-95(a)(2) or 90-95(a)(3), or 90-113.10, or
30 90-113.11, or 90-113.12, or 90-113.21 shall be considered previous convictions.

31 Failure to complete successfully an approved program of instruction at a drug education
32 school shall constitute grounds to revoke probation and deny application for expunction of all
33 recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and
34 dismissal and discharge pursuant to this section. For purposes of this subsection, the phrase
35 "failure to complete successfully the prescribed program of instruction at a drug education
36 school" includes failure to attend scheduled classes without a valid excuse, failure to complete
37 the course within 150 days of imposition of probation, willful failure to pay the required fee for
38 the course, or any other manner in which the person fails to complete the course successfully.
39 The instructor of the course to which a person is assigned shall report any failure of a person to
40 complete successfully the program of instruction to the court which imposed probation. Upon
41 receipt of the instructor's report that the person failed to complete the program successfully, the
42 court shall revoke probation and/or deny application for expunction of all recordation of
43 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and
44 discharge pursuant to this section. A person may obtain a hearing before the court of original
45 jurisdiction prior to revocation of probation or denial of application for expunction.

46 This subsection is supplemental and in addition to existing law and shall not be construed
47 so as to repeal any existing provision contained in the General Statutes of North Carolina.

48 (b) Upon the dismissal of such person, and discharge of the proceedings against him
49 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
50 of the offense, may be eligible to apply for expunction of certain records relating to the offense
51 pursuant to G.S. 15A-145.3(a). ~~may apply to the court for an order to expunge from all official~~

1 records (other than the confidential file to be retained by the Administrative Office of the
2 Courts under subsection (c)) all recordation relating to his arrest, indictment or information,
3 trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall
4 attach to the application the following:

- 5 (1) An affidavit by the applicant that he has been of good behavior during the
6 period of probation since the decision to defer further proceedings on the
7 misdemeanor in question and has not been convicted of any felony, or
8 misdemeanor, other than a traffic violation, under the laws of the United
9 States or the laws of this State or any other state;
- 10 (2) Verified affidavits by two persons who are not related to the applicant or to
11 each other by blood or marriage, that they know the character and reputation
12 of the petitioner in the community in which he lives, and that his character
13 and reputation are good;
- 14 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
15 and sheriff of the county in which the petitioner was convicted, and, if
16 different, the county of which the petitioner is a resident, showing that the
17 applicant has not been convicted of a felony or misdemeanor other than a
18 traffic violation under the laws of this State at any time prior to the
19 conviction for the misdemeanor in question or during the period of probation
20 following the decision to defer further proceedings on the misdemeanor in
21 question.

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

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

33 The court shall also order that said conviction and the records relating thereto be expunged
34 from the records of the court, and direct all law enforcement agencies bearing records of the
35 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
36 order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,
37 chief of police or other arresting agency, as appropriate, shall forward such order to the State
38 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
39 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
40 Investigation.

41 (c) The clerk of superior court in each county in North Carolina shall, as soon as
42 practicable after each term of court in his county, file with the Commission, the names of all
43 persons convicted under such Articles, together with the offense or offenses of which such
44 persons were convicted. The clerk shall also file with the Administrative Office of the Courts
45 the names of those persons granted a conditional discharge under the provisions of this Article,
46 and the Administrative Office of the Court shall maintain a confidential file containing the
47 names of persons granted conditional discharges. The information contained in such file shall
48 be disclosed only to judges of the General Court of Justice of North Carolina for the purpose of
49 ascertaining whether any person charged with an offense under Article 5 or 5A has been
50 previously granted a conditional discharge.

1 (d) Whenever any person is charged with a misdemeanor under this Article by
2 possessing a controlled substance included within Schedules II through VI of this Article, or by
3 possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of
4 the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or
5 other adjudication of innocence, the person may be eligible to apply for expunction of certain
6 records relating to the offense pursuant to G.S. 15A-145.3(b). ~~such person may apply to the~~
7 ~~court for an order to expunge from all official records all recordation relating to his arrest,~~
8 ~~indictment, or information, and trial. If the court determines, after hearing that such person was~~
9 ~~not over 21 years of age at the time any of the proceedings against him occurred, it shall enter~~
10 ~~such order. No person as to whom such order has been entered shall be held thereafter under~~
11 ~~any provision of any law to be guilty of perjury or otherwise giving a false statement by reason~~
12 ~~of his failures to recite or acknowledge such arrest, or indictment, or information, or trial in~~
13 ~~response to any inquiry made of him for any purpose.~~

14 (e) Whenever any person who has not previously been convicted of an offense under
15 this Article or under any statute of the United States or any state relating to controlled
16 substances included in any schedule of this Article or to that paraphernalia included in Article
17 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article
18 by possessing a controlled substance included within Schedules II through VI of this Article,
19 the person may be eligible to apply for cancellation of the judgment and expunction of certain
20 records related to the offense pursuant to G.S. 15A-145.3(c). ~~the court may, upon application of~~
21 ~~the person not sooner than 12 months after conviction, order cancellation of the judgment of~~
22 ~~conviction and expunction of the records of his arrest, indictment, or information, trial and~~
23 ~~conviction. A conviction in which the judgment of conviction has been cancelled and the~~
24 ~~records expunged pursuant to this section shall not be thereafter deemed a conviction for~~
25 ~~purposes of this section or for purposes of disqualifications or liabilities imposed by law upon~~
26 ~~conviction of a crime including the additional penalties imposed for second or subsequent~~
27 ~~convictions of this Article. Cancellation and expunction under this section may occur only once~~
28 ~~with respect to any person. Disposition of a case under this section at the district court division~~
29 ~~of the General Court of Justice shall be final for the purpose of appeal.~~

30 ~~The granting of an application filed under this section shall cause the issue of an order to~~
31 ~~expunge from all official records (other than the confidential file to be retained by the~~
32 ~~Administrative Office of the Courts under subsection (c)) all recordation relating to his arrest,~~
33 ~~indictment, or information, trial, finding of guilty, judgment of conviction, cancellation of the~~
34 ~~judgment, and expunction of records pursuant to this section.~~

35 ~~The judge to whom the petition is presented is authorized to call upon a probation officer~~
36 ~~for additional investigation or verification of the petitioner's conduct since conviction. If the~~
37 ~~court determines that the petitioner was convicted of a misdemeanor under this Article for~~
38 ~~possessing a controlled substance included within Schedules II through VI of this Article, or for~~
39 ~~possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of~~
40 ~~age at the time of the offense, that he has been of good behavior since his conviction, that he~~
41 ~~has successfully completed a drug education program approved for this purpose by the~~
42 ~~Department of Health and Human Services, and that he has not been convicted of a felony or~~
43 ~~misdemeanor other than a traffic violation under the laws of this State at any time prior to or~~
44 ~~since the conviction for the misdemeanor in question, it shall enter an order of expunction of~~
45 ~~the petitioner's court record. The effect of such order shall be to restore the petitioner in the~~
46 ~~contemplation of the law to the status he occupied before such arrest or indictment or~~
47 ~~information or conviction. No person as to whom such order was entered shall be held~~
48 ~~thereafter under any provision of any law to be guilty of perjury or otherwise giving a false~~
49 ~~statement by reason of his failures to recite or acknowledge such arrest, or indictment or~~
50 ~~information, or conviction, or trial in response to any inquiry made of him for any purpose. The~~
51 ~~judge may waive the condition that the petitioner attend the drug education school if the judge~~

1 makes a specific finding that there was no drug education school within a reasonable distance
2 of the defendant's residence or that there were specific extenuating circumstances which made
3 it likely that the petitioner would not benefit from the program of instruction.

4 The court shall also order that all law enforcement agencies bearing records of the
5 conviction and records relating thereto to expunge their records of the conviction. The clerk
6 shall forward a certified copy of the order to the sheriff, chief of police, or other arresting
7 agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of
8 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of
9 Investigation shall forward the court order in like manner to the Federal Bureau of
10 Investigation.

11 The clerk of superior court in each county in North Carolina shall, as soon as practicable
12 after each term of court in his county, file with the Administrative Office of the Courts the
13 names of those persons whose judgments of convictions have been cancelled and expunged
14 under the provisions of this Article, and the Administrative Office of the Courts shall maintain
15 a confidential file containing the names of persons whose judgments of convictions have been
16 cancelled and expunged. The information contained in the file shall be disclosed only to judges
17 of the General Court of Justice of North Carolina for the purpose of ascertaining whether any
18 person charged with an offense under this Article has been previously granted cancellation and
19 expunction of a judgment of conviction pursuant to the terms of this Article."

20 **SECTION 7.** This act becomes effective December 1, 2009, and applies to
21 offenses committed on or after that date.