

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2009

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HOUSE BILL 1329  
Committee Substitute Favorable 4/29/09  
Committee Substitute #2 Favorable 5/11/09  
Senate Judiciary I Committee Substitute Adopted 6/30/09  
Senate Judiciary I Committee Substitute #2 Adopted 8/4/09

Short Title: Consolidate Expunction Statutes.

(Public)

Sponsors:

Referred to:

April 9, 2009

A BILL TO BE ENTITLED

AN ACT TO CONSOLIDATE ALL STATUTES RELATED TO EXPUNCTION OF RECORDS IN ONE ARTICLE OF THE GENERAL STATUTES, TO MODIFY THE AGE REQUIREMENTS OF CERTAIN EXPUNCTIONS TO BE THE AGE AT THE TIME OF THE OFFENSE RATHER THAN THE AGE AT THE TIME OF CONVICTION, TO ALLOW THE EXPUNCTION OF MISDEMEANOR LARCENY, AND TO MAKE CLARIFYING AND CONFORMING CHANGES TO THE EXPUNCTION STATUTES.

The General Assembly of North Carolina enacts:

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

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

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

(1) An affidavit by the petitioner that the petitioner has been of good behavior (i) during the period of probation since the decision to defer further proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii) during the two-year period since the date of conviction of the offense in question, whichever applies, and has not been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state.

(2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation



1 of the petitioner in the community in which the petitioner lives, and that the  
2 petitioner's character and reputation are good.

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

6 (4) Affidavits of the clerk of superior court, chief of police, where appropriate,  
7 and sheriff of the county in which the petitioner was convicted and, if  
8 different, the county of which the petitioner is a resident, showing that the  
9 petitioner has not been convicted of a felony or misdemeanor other than a  
10 traffic violation under the laws of this State (i) during the period of probation  
11 since the decision to defer further proceedings on the offense in question  
12 pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the  
13 offense in question or during the two-year period following that conviction,  
14 whichever applies.

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

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

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

24 (b) If the court, after hearing, finds that (i) the petitioner was dismissed and the  
25 proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had  
26 not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of  
27 good behavior and been free of conviction of any felony or misdemeanor other than a traffic  
28 violation for two years from the date of conviction of the offense in question, the petitioner has  
29 no outstanding restitution orders or civil judgments representing amounts ordered for restitution  
30 entered against him, and the petitioner had not attained the age of 18 years at the time of the  
31 offense in question, it shall order that such person be restored, in the contemplation of the law,  
32 to the status occupied by the petitioner before such arrest or indictment or information. No  
33 person as to whom such order has been entered shall be held thereafter under any provision of  
34 any laws to be guilty of perjury or otherwise giving a false statement by reason of the person's  
35 failure to recite or acknowledge such arrest, or indictment or information, or trial, or response  
36 to any inquiry made of the person for any purpose. The court shall also order that the said  
37 conviction be expunged from the records of the court and direct all law enforcement agencies  
38 bearing record of the same to expunge their records of the conviction as the result of a criminal  
39 charge. The clerk shall forward a certified copy of the order to the sheriff, chief of police, or  
40 other arresting agency. The sheriff, chief of police, or head of such other arresting agency shall  
41 then transmit the copy of the order with a form supplied by the State Bureau of Investigation to  
42 the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order  
43 to the Federal Bureau of Investigation.

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

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

49 **"§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**  
50 **time of the offense of certain drug offenses.**

1        (a) Whenever a person is discharged, and the proceedings against the person dismissed,  
2 pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the  
3 offense, the person may apply to the court for an order to expunge from all official records  
4 (other than the confidential file to be retained by the Administrative Office of the Courts under  
5 G.S. 90-96(c)) all recordation relating to his arrest, indictment or information, trial, finding of  
6 guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the  
7 application the following:

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

13            (2) Verified affidavits by two persons who are not related to the applicant or to  
14 each other by blood or marriage, that they know the character and reputation  
15 of the petitioner in the community in which he lives, and that his character  
16 and reputation are good;

17            (3) Affidavits of the clerk of superior court, chief of police, where appropriate,  
18 and sheriff of the county in which the petitioner was convicted, and, if  
19 different, the county of which the petitioner is a resident, showing that the  
20 applicant has not been convicted of a felony or misdemeanor other than a  
21 traffic violation under the laws of this State at any time prior to the  
22 conviction for the offense in question or during the period of probation  
23 following the decision to defer further proceedings on the offense in  
24 question.

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

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

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

44        (b) Whenever any person is charged with a misdemeanor under Article 5 of Chapter 90  
45 of the General Statutes by possessing a controlled substance included within Schedules II  
46 through VI of Article 5 of Chapter 90 of the General Statutes or a felony under  
47 G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by the State of  
48 the charges against him, upon entry of a nolle prosequi, or upon a finding of not guilty or other  
49 adjudication of innocence, such person may apply to the court for an order to expunge from all  
50 official records all recordation relating to his arrest, indictment or information, or trial. If the  
51 court determines, after hearing, that such person was not over 21 years of age at the time the

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

6 (c) Whenever any person who has not previously been convicted of an offense under  
7 Article 5 of Chapter 90 of the General Statutes or under any statute of the United States or any  
8 state relating to controlled substances included in any schedule of Article 5 of Chapter 90 of the  
9 General Statutes or to that paraphernalia included in Article 5B of Chapter 90 of the General  
10 Statutes pleads guilty to or has been found guilty of (i) a misdemeanor under Article 5 of  
11 Chapter 90 of the General Statutes by possessing a controlled substance included within  
12 Schedules II through VI of Article 5 of Chapter 90 of the General Statutes or by possessing  
13 drug paraphernalia as prohibited by G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by  
14 possessing less than one gram of cocaine, the court may, upon application of the person not  
15 sooner than 12 months after conviction, order cancellation of the judgment of conviction and  
16 expunction of the records of his arrest, indictment or information, trial, and conviction. A  
17 conviction in which the judgment of conviction has been canceled and the records expunged  
18 pursuant to this subsection shall not be thereafter deemed a conviction for purposes of this  
19 subsection or for purposes of disqualifications or liabilities imposed by law upon conviction of  
20 a crime, including the additional penalties imposed for second or subsequent convictions of  
21 Article 5 of Chapter 90 of the General Statutes. Cancellation and expunction under this  
22 subsection may occur only once with respect to any person. Disposition of a case under this  
23 subsection at the district court division of the General Court of Justice shall be final for the  
24 purpose of appeal.

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

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

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

8       The clerk of superior court in each county in North Carolina shall, as soon as practicable  
9 after each term of court in his county, file with the Administrative Office of the Courts the  
10 names of those persons whose judgments of convictions have been canceled and expunged  
11 under the provisions of this subsection, and the Administrative Office of the Courts shall  
12 maintain a confidential file containing the names of persons whose judgments of convictions  
13 have been canceled and expunged. The information contained in the file shall be disclosed only  
14 to judges of the General Court of Justice of North Carolina for the purpose of ascertaining  
15 whether any person charged with an offense under Article 5 of Chapter 90 of the General  
16 Statutes has been previously granted cancellation and expunction of a judgment of conviction  
17 pursuant to the terms of this subsection.

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

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

24 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**  
25 **time of the offense of certain toxic vapors offenses.**

26       (a) Whenever a person is discharged and the proceedings against the person dismissed  
27 under G.S. 90-113.14(a) or (a1), such person, if he was not over 21 years of age at the time of  
28 the offense, may apply to the court for an order to expunge from all official records (other than  
29 the confidential file to be retained by the Administrative Office of the Courts under  
30 G.S. 90-113.14(c)) all recordation relating to his arrest, indictment or information, trial, finding  
31 of guilty, and dismissal and discharge pursuant to this section. The applicant shall attach to the  
32 application the following:

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

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

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

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

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

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

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

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

21        The court shall also order all law enforcement agencies bearing records of the conviction  
22 and records relating thereto to expunge their records of the conviction. The clerk shall forward  
23 a certified copy of the order to the sheriff, chief of police, or other arresting agency, as  
24 appropriate, and the arresting agency shall forward the order to the State Bureau of  
25 Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of  
26 Investigation shall forward the court order in like manner to the Federal Bureau of  
27 Investigation.

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

38        **SECTION 4.** G.S. 14-50.29 reads as rewritten:

39        **"§ 14-50.29. Conditional discharge for first offenders under the age of 18.**

40        (a) Whenever any person who ~~has not yet attained the age of 18 years, and~~ has not  
41 previously been convicted of any felony or misdemeanor other than a traffic violation under the  
42 laws of the United States or the laws of this State or any other state, pleads guilty to or is guilty  
43 of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, and  
44 the offense was committed before the person attained the age of 18 years, the court may,  
45 without entering a judgment of guilt and with the consent of the defendant, defer further  
46 proceedings and place the defendant on probation upon such reasonable terms and conditions  
47 as the court may require.

48        (b) If the court, in its discretion, defers proceedings pursuant to this section, it shall  
49 place the defendant on supervised probation for not less than one year, in addition to any other  
50 conditions. Prior to taking any action to discharge and dismiss under this section, the court shall  
51 make a finding that the defendant has no previous criminal convictions. Upon fulfillment of the

1 terms and conditions of the probation provided for in this section, the court shall discharge the  
2 defendant and dismiss the proceedings against the defendant.

3 (c) Discharge and dismissal under this section shall be without court adjudication of  
4 guilt and shall not be deemed a conviction for purposes of this section or for purposes of  
5 disqualifications or disabilities imposed by law upon conviction of a crime. Discharge and  
6 dismissal under this section may occur only once with respect to any person. Disposition of a  
7 case to determine discharge and dismissal under this section at the district court division of the  
8 General Court of Justice shall be final for the purpose of appeal. Upon violation of a term or  
9 condition of the probation provided for in this section, the court may enter an adjudication of  
10 guilt and proceed as otherwise provided.

11 (d) Upon discharge and dismissal pursuant to this section, the person may apply for an  
12 order to expunge the complete record of the proceedings resulting in the dismissal and  
13 discharge, pursuant to the procedures and requirements set forth in  
14 ~~G.S. 14-50.30(a), G.S. 15A-145.1. If the court determines, after hearing, that such person was~~  
15 ~~dismissed and the proceedings against the person discharged and that the person had not yet~~  
16 ~~attained 18 years of age at the time of the offense, it shall enter such order. The effect of such~~  
17 ~~order shall be to restore such person in the contemplation of the law to the status the person~~  
18 ~~occupied before such arrest or indictment or information.~~

19 (e) The clerk of superior court in each county in North Carolina shall, as soon as  
20 practicable after each term of court in his county, file with the Administrative Office of the  
21 Courts the names of those persons granted a discharge under the provisions of this section, and  
22 the Administrative Office of the Courts shall maintain a confidential file containing the names  
23 of persons granted conditional discharges. The information contained in such file shall be  
24 disclosed only to judges of the General Court of Justice of North Carolina for the purpose of  
25 ascertaining whether any person charged with an offense has been previously granted a  
26 discharge."

27 **SECTION 5.** G.S. 14-50.30 reads as rewritten:

28 **"§ 14-50.30. Expunction of records.**

29 ~~(a) Whenever any Any person who has not yet attained the age of 18 years and has not~~  
30 ~~previously been convicted of any felony or misdemeanor other than a traffic violation under the~~  
31 ~~laws of the United States or the laws of this State or any other state, may, if the offense was~~  
32 ~~committed before the person attained the age of 18 years, be eligible to apply for expunction of~~  
33 ~~certain offenses under this Article pursuant to G.S. 15A-145.1. pleads guilty to or is guilty of (i)~~  
34 ~~a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, the person~~  
35 ~~may file a petition in the court where the person was convicted for expunction of the offense~~  
36 ~~from the person's criminal record. Except as provided in G.S. 14-50.29 upon discharge and~~  
37 ~~dismissal, the petition cannot be filed earlier than (i) two years after the date of the conviction~~  
38 ~~or (ii) the completion of any period of probation, whichever occurs later. The petition shall~~  
39 ~~contain, but not be limited to, the following:~~

40 (1) ~~An affidavit by the petitioner that the petitioner has been of good behavior~~  
41 ~~(i) during the period of probation since the decision to defer further~~  
42 ~~proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)~~  
43 ~~during the two year period since the date of conviction of the offense in~~  
44 ~~question, whichever applies, and has not been convicted of any felony, or~~  
45 ~~misdemeanor other than a traffic violation, under the laws of the United~~  
46 ~~States or the laws of this State or any other state.~~

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



- 1           (3)    If the petition is filed subsequent to conviction of the offense in question, a  
2           statement that the petition is a motion in the cause in the case wherein the  
3           petitioner was convicted.  
4           (4)    Affidavits of the clerk of superior court, chief of police, where appropriate,  
5           and sheriff of the county in which the petitioner was convicted and, if  
6           different, the county of which the petitioner is a resident, showing that the  
7           petitioner has not been convicted of a felony or misdemeanor other than a  
8           traffic violation under the laws of this State (i) during the period of probation  
9           since the decision to defer further proceedings on the offense in question  
10          pursuant to G.S. 14-50.29 or (ii) at any time prior to the conviction for the  
11          offense in question or during the two-year period following that conviction,  
12          whichever applies.  
13          (5)    An affidavit by the petitioner that no restitution orders or civil judgments  
14          representing amounts ordered for restitution entered against the petitioner  
15          are outstanding.

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

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 or during the two-year period after conviction.

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

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

43          **SECTION 6.** G.S. 90-96 reads as rewritten:

44          "**§ 90-96. Conditional discharge and expunction of records for first offense.**

45          (a)    Whenever any person who has not previously been convicted of any offense under  
46          this Article or under any statute of the United States or any state relating to those substances  
47          included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of  
48          Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by  
49          possessing a controlled substance included within Schedules II through VI of this Article or by  
50          possessing drug paraphernalia as prohibited by ~~G.S. 90-113.21~~, G.S. 90-113.22, or (ii) a felony  
51          under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, without

1 entering a judgment of guilt and with the consent of such person, defer further proceedings and  
2 place him on probation upon such reasonable terms and conditions as it may require.  
3 Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may  
4 be imposed under this section for an offense under this Article for which the prescribed  
5 punishment includes only a fine. To fulfill the terms and conditions of probation the court may  
6 allow the defendant to participate in a drug education program approved for this purpose by the  
7 Department of Health and Human Services. Upon violation of a term or condition, the court  
8 may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the  
9 terms and conditions, the court shall discharge such person and dismiss the proceedings against  
10 him. Discharge and dismissal under this section shall be without court adjudication of guilt and  
11 shall not be deemed a conviction for purposes of this section or for purposes of  
12 disqualifications or disabilities imposed by law upon conviction of a crime including the  
13 additional penalties imposed for second or subsequent convictions under this Article. Discharge  
14 and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any  
15 person. Disposition of a case to determine discharge and dismissal under this section at the  
16 district court division of the General Court of Justice shall be final for the purpose of appeal.  
17 Prior to taking any action to discharge and dismiss under this section the court shall make a  
18 finding that the defendant has no record of previous convictions under the "North Carolina  
19 Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act",  
20 Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

21 (a1) Upon the first conviction only of any offense included in G.S. 90-95(a)(3) or  
22 ~~G.S. 90-113.21~~G.S. 90-113.22 and subject to the provisions of this subsection (a1), the court  
23 may place defendant on probation under this section for an offense under this Article including  
24 an offense for which the prescribed punishment includes only a fine. The probation, if imposed,  
25 shall be for not less than one year and shall contain a minimum condition that the defendant  
26 who was found guilty or pleads guilty enroll in and successfully complete, within 150 days of  
27 the date of the imposition of said probation, the program of instruction at the drug education  
28 school approved by the Department of Health and Human Services pursuant to G.S. 90-96.01.  
29 The court may impose probation that does not contain a condition that defendant successfully  
30 complete the program of instruction at a drug education school if:

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

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

38 Upon fulfillment of the terms and conditions of the probation, the court shall discharge such  
39 person and dismiss the proceedings against the person.

40 For the purposes of determining whether the conviction is a first conviction or whether a  
41 person has already had discharge and dismissal, no prior offense occurring more than seven  
42 years before the date of the current offense shall be considered. In addition, convictions for  
43 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  
44 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

45 Failure to complete successfully an approved program of instruction at a drug education  
46 school shall constitute grounds to revoke probation pursuant to this subsection and deny  
47 application for expunction of all recordation of defendant's arrest, indictment, or information,  
48 trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.2. For  
49 purposes of this subsection, the phrase "failure to complete successfully the prescribed program  
50 of instruction at a drug education school" includes failure to attend scheduled classes without a  
51 valid excuse, failure to complete the course within 150 days of imposition of probation, willful

1 failure to pay the required fee for the ~~course,~~ course as provided in G.S. 90-96.01(b), or any  
2 other manner in which the person fails to complete the course successfully. The instructor of  
3 the course to which a person is assigned shall report any failure of a person to complete  
4 successfully the program of instruction to the court which imposed probation. Upon receipt of  
5 the instructor's report that the person failed to complete the program successfully, the court  
6 shall revoke ~~probation and/or probation,~~ shall not discharge such person, shall not dismiss the  
7 proceedings against the person, and shall deny application for expunction of all recordation of  
8 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and  
9 discharge pursuant to ~~this section.~~ G.S. 15A-145.2. A person may obtain a hearing before the  
10 court of original jurisdiction prior to revocation of probation or denial of application for  
11 expunction.

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

14 (b) Upon the ~~dismissal~~ discharge of such person, and ~~discharge~~ dismissal of the  
15 proceedings against him under subsection (a) or (a1) of this section, such person, if he were not  
16 over 21 years of age at the time of the offense, may be eligible to apply for expunction of  
17 certain records relating to the offense pursuant to G.S. 15A-145.2(a). ~~may apply to the court for~~  
18 ~~an order to expunge from all official records (other than the confidential file to be retained by~~  
19 ~~the Administrative Office of the Courts under subsection (c)) all recordation relating to his~~  
20 ~~arrest, indictment or information, trial, finding of guilty, and dismissal and discharge pursuant~~  
21 ~~to this section. The applicant shall attach to the application the following:~~

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

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

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

50 ~~The court shall also order that said conviction and the records relating thereto be expunged~~  
51 ~~from the records of the court, and direct all law enforcement agencies bearing records of the~~

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

7 (c) The clerk of superior court in each county in North Carolina shall, as soon as  
8 practicable after each term of court in his county, file with the Administrative Office of the  
9 Courts the names of those persons granted a conditional discharge under the provisions of this  
10 Article, and the Administrative Office of the Courts shall maintain a confidential file containing  
11 the names of persons granted conditional discharges. The information contained in the file shall  
12 be disclosed only to Judges of the General Court of Justice of North Carolina for the purpose of  
13 ascertaining whether any person charged with an offense under this Article has been previously  
14 granted a conditional discharge.

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

28 (e) Whenever any person who has not previously been convicted of an offense under  
29 this Article or under any statute of the United States or any state relating to controlled  
30 substances included in any schedule of this Article or to that paraphernalia included in Article  
31 5B of Chapter 90 of the General Statutes pleads guilty to or has been found guilty of (i) a  
32 misdemeanor under this Article by possessing a controlled substance included within Schedules  
33 II through VI of this Article, or by possessing drug paraphernalia as prohibited by  
34 G.S. 90-113.21, G.S. 90-113.22 or (ii) a felony under G.S. 90-95(a)(3) by possessing less than  
35 one gram of cocaine, the person may be eligible to apply for cancellation of the judgment and  
36 expunction of certain records related to the offense pursuant to G.S. 15A-145.2(c). the court  
37 may, upon application of the person not sooner than 12 months after conviction, order  
38 cancellation of the judgment of conviction and expunction of the records of his arrest,  
39 indictment, or information, trial and conviction. A conviction in which the judgment of  
40 conviction has been canceled and the records expunged pursuant to this section shall not be  
41 thereafter deemed a conviction for purposes of this section or for purposes of disqualifications  
42 or liabilities imposed by law upon conviction of a crime including the additional penalties  
43 imposed for second or subsequent convictions of this Article. Cancellation and expunction  
44 under this section may occur only once with respect to any person. Disposition of a case under  
45 this section at the district court division of the General Court of Justice shall be final for the  
46 purpose of appeal.

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

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

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

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

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

42 **SECTION 7.** G.S. 90-113.14 reads as rewritten:

43 **"§ 90-113.14. Conditional discharge and expunction of records for first offenses.**

44 (a) Whenever any person who has not previously been convicted of any offense under  
45 this Article or under any statute of the United States or any state relating to those substances  
46 included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or  
47 possessing any substance having the property of releasing toxic vapors or fumes in violation of  
48 Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the  
49 consent of such person, defer further proceedings and place him on probation upon such  
50 reasonable terms and conditions as it may require. Notwithstanding the provisions of  
51 G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for

1 an offense under this Article for which the prescribed punishment includes only a fine. To  
2 fulfill the terms and conditions of probation the court may allow the defendant to participate in  
3 a drug education program approved for this purpose by the Department of Health and Human  
4 Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and  
5 proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall  
6 discharge such person and dismiss the proceedings against him. Discharge and dismissal under  
7 this section shall be without court adjudication of guilt and shall not be deemed a conviction for  
8 purposes of this section or for purposes of disqualifications or disabilities imposed by law upon  
9 conviction of a crime including the additional penalties imposed for second or subsequent  
10 convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once  
11 with respect to any person. Disposition of a case to determine discharge and dismissal under  
12 this section at the district court division of the General Court of Justice shall be final for the  
13 purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court  
14 shall make a finding that the defendant has no record of previous convictions under the "North  
15 Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled  
16 Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter  
17 90.

18 (a1) Upon the first conviction only of any offense included in G.S. 90-113.10 or  
19 90-113.11 and subject to the provisions of this subsection (a1), the court may place defendant  
20 on probation under this section for an offense under this Article including an offense for which  
21 the prescribed punishment includes only a fine. The probation, if imposed, shall be for not less  
22 than one year and shall contain a minimum condition that the defendant who was found guilty  
23 or pleads guilty enroll in and successfully complete, within 150 days of the date of the  
24 imposition of said probation, the program of instruction at the drug education school approved  
25 by the Department of Health and Human Services pursuant to G.S. 90-96.01. The court may  
26 impose probation that does not contain a condition that defendant successfully complete the  
27 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 subsection  
33 (2) above, such findings shall include the specific, extenuating circumstances which make it  
34 likely that the defendant will not benefit from the program of instruction.

35 Upon fulfillment of the terms and conditions of the probation, the court shall discharge such  
36 person and dismiss the proceedings against the person.

37 For the purpose of determining whether the conviction is a first conviction or whether a  
38 person has already had discharge and dismissal, no prior offense occurring more than seven  
39 years before the date of the current offense shall be considered. In addition, convictions for  
40 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  
41 90-113.11, or 90-113.12, or ~~90-113.21~~90-113.22 shall be considered previous convictions.

42 Failure to complete successfully an approved program of instruction at a drug education  
43 school shall constitute grounds to revoke probation pursuant to this subsection and deny  
44 application for expunction of all recordation of defendant's arrest, indictment, or information,  
45 trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.3. For  
46 purposes of this subsection, the phrase "failure to complete successfully the prescribed program  
47 of instruction at a drug education school" includes failure to attend scheduled classes without a  
48 valid excuse, failure to complete the course within 150 days of imposition of probation, willful  
49 failure to pay the required fee for the ~~course~~ course as provided in G.S. 90-96.01(b), or any  
50 other manner in which the person fails to complete the course successfully. The instructor of  
51 the course to which a person is assigned shall report any failure of a person to complete

1 successfully the program of instruction to the court which imposed probation. Upon receipt of  
2 the instructor's report that the person failed to complete the program successfully, the court  
3 shall revoke ~~probation and/or probation~~, shall not discharge such person, shall not dismiss the  
4 proceedings against the person, and shall deny application for expunction of all recordation of  
5 defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and  
6 discharge pursuant to ~~this section~~. G.S. 15A-145.3. A person may obtain a hearing before the  
7 court of original jurisdiction prior to revocation of probation or denial of application for  
8 expunction.

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

11 (b) Upon the dismissal of such person, and discharge of the proceedings against him  
12 under subsection (a) or (a1) of this section, such person, if he were not over 21 years of age at  
13 the time of the offense, may be eligible to apply for expunction of certain records relating to the  
14 offense pursuant to G.S. 15A-145.3(a). ~~may apply to the court for an order to expunge from all~~  
15 ~~official records (other than the confidential file to be retained by the Administrative Office of~~  
16 ~~the Courts under subsection (c)) all recordation relating to his arrest, indictment or information,~~  
17 ~~trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall~~  
18 ~~attach to the application the following:~~

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

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

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

47 The court shall also order that said conviction and the records relating thereto be expunged  
48 from the records of the court, and direct all law enforcement agencies bearing records of the  
49 same to expunge their records of the conviction. The clerk shall forward a certified copy of the  
50 order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,  
51 chief of police or other arresting agency, as appropriate, shall forward such order to the State

1 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State  
2 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of  
3 Investigation.

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

14 (d) Whenever any person is charged with a misdemeanor under this Article by  
15 ~~possessing a controlled substance included within Schedules II through VI of this Article, or by~~  
16 ~~or possessing drug paraphernalia as prohibited by G.S. 90-113.21~~G.S. 90-113.22 upon  
17 dismissal by the State of the charges against him or upon entry of a nolle prosequi or upon a  
18 finding of not guilty or other adjudication of innocence, the person may be eligible to apply for  
19 expunction of certain records relating to the offense pursuant to G.S. 15A-145.3(b).~~such person~~  
20 ~~may apply to the court for an order to expunge from all official records all recordation relating~~  
21 ~~to his arrest, indictment, or information, and trial. If the court determines, after hearing that~~  
22 ~~such person was not over 21 years of age at the time any of the proceedings against him~~  
23 ~~occurred, it shall enter such order. No person as to whom such order has been entered shall be~~  
24 ~~held thereafter under any provision of any law to be guilty of perjury or otherwise giving a~~  
25 ~~false statement by reason of his failures to recite or acknowledge such arrest, or indictment, or~~  
26 ~~information, or trial in response to any inquiry made of him for any purpose.~~

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

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

49 The judge to whom the petition is presented is authorized to call upon a probation officer  
50 for additional investigation or verification of the petitioner's conduct since conviction. If the  
51 court determines that the petitioner was convicted of a misdemeanor under this Article for



1 possessing a controlled substance included within Schedules II through VI of this Article, or for  
2 possessing drug paraphernalia as prohibited by G.S. 90-113.21, that he was not over 21 years of  
3 age at the time of the offense, that he has been of good behavior since his conviction, that he  
4 has successfully completed a drug education program approved for this purpose by the  
5 Department of Health and Human Services, and that he has not been convicted of a felony or  
6 misdemeanor other than a traffic violation under the laws of this State at any time prior to or  
7 since the conviction for the misdemeanor in question, it shall enter an order of expunction of  
8 the petitioner's court record. The effect of such order shall be to restore the petitioner in the  
9 contemplation of the law to the status he occupied before such arrest or indictment or  
10 information or conviction. No person as to whom such order was entered shall be held  
11 thereafter under any provision of any law to be guilty of perjury or otherwise giving a false  
12 statement by reason of his failures to recite or acknowledge such arrest, or indictment or  
13 information, or conviction, or trial in response to any inquiry made of him for any purpose. The  
14 judge may waive the condition that the petitioner attend the drug education school if the judge  
15 makes a specific finding that there was no drug education school within a reasonable distance  
16 of the defendant's residence or that there were specific extenuating circumstances which made  
17 it likely that the petitioner would not benefit from the program of instruction.

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

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

34 **SECTION 8.** G.S. 15A-146(a) reads as rewritten:

35 "(a) If any person is charged with a crime, either a misdemeanor or a felony, or was  
36 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is  
37 dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the  
38 court of the county where the charge was brought for an order to expunge from all official  
39 records any entries relating to his apprehension or trial. The court shall hold a hearing on the  
40 application and, upon finding that the person had not previously received an expungement  
41 under this section, G.S. 15A-145, or ~~G.S. 90-96~~, G.S. 15A-145.1, 15A-145.2, or 15A-145.3, and  
42 that the person had not previously been convicted of any felony under the laws of the United  
43 States, this State, or any other state, the court shall order the expunction. No person as to whom  
44 such an order has been entered shall be held thereafter under any provision of any law to be  
45 guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry  
46 made for any purpose, by reason of his failure to recite or acknowledge any expunged entries  
47 concerning apprehension or trial."

48 **SECTION 9.** G.S. 15A-146(a1) reads as rewritten:

49 "(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple  
50 offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,  
51 then a person may apply to have each of those charges expunged if the offenses occurred within

1 the same 12-month period of time or if the charges are dismissed or findings are made at the  
2 same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court"  
3 shall mean one week for superior court and one day for district court. There is no requirement  
4 that the multiple offenses arise out of the same transaction or occurrence or that the multiple  
5 offenses were consolidated for judgment. The court shall hold a hearing on the application. If  
6 the court finds that the person had not previously received an expungement under this  
7 subsection, that the person had not previously received an expungement under ~~G.S. 15A-145 or~~  
8 ~~G.S. 90-96~~, G.S. 15A-145, 15A-145.1, 15A-145.2, or 15A-145.3, and that the person had not  
9 previously been convicted of any felony under the laws of the United States, this State, or any  
10 other state, the court shall order the expunction. No person as to whom such an order has been  
11 entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be  
12 guilty of otherwise giving a false statement or response to any inquiry made for any purpose,  
13 by reason of his failure to recite or acknowledge any expunged entries concerning apprehension  
14 or trial."

15 **SECTION 10.** G.S. 15A-145 reads as rewritten:

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

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

- 31 (1) An affidavit by the petitioner that he has been of good behavior for the  
32 two-year period since the date of conviction of the misdemeanor in question  
33 and has not been convicted of any felony, or misdemeanor other than a  
34 traffic violation, under the laws of the United States or the laws of this State  
35 or any other state.
- 36 (2) Verified affidavits of two persons who are not related to the petitioner or to  
37 each other by blood or marriage, that they know the character and reputation  
38 of the petitioner in the community in which he lives and that his character  
39 and reputation are good.
- 40 (3) A statement that the petition is a motion in the cause in the case wherein the  
41 petitioner was convicted.
- 42 (4) Affidavits of the clerk of superior court, chief of police, where appropriate,  
43 and sheriff of the county in which the petitioner was convicted and, if  
44 different, the county of which the petitioner is a resident, showing that the  
45 petitioner has not been convicted of a felony or misdemeanor other than a  
46 traffic violation under the laws of this State at any time prior to the  
47 conviction for the misdemeanor in question or during the two-year period  
48 following that conviction.
- 49 (5) An affidavit by the petitioner that no restitution orders or civil judgments  
50 representing amounts ordered for restitution entered against him are  
51 outstanding.

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

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

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

19 (c) The court shall also order that the said misdemeanor conviction, or a civil  
20 revocation of a drivers license as the result of a criminal charge, be expunged from the records  
21 of the court, and direct all law-enforcement agencies, including the Division of Motor Vehicles,  
22 bearing record of the same to expunge their records of the conviction or a civil revocation of a  
23 drivers license as the result of a criminal charge. This subsection does not apply to civil or  
24 criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2.  
25 The clerk shall forward a certified copy of the order to the sheriff, chief of police, or other  
26 arresting agency. The clerk shall forward a certified copy of the order to the Division of Motor  
27 Vehicles for the expunction of a civil revocation provided the underlying criminal charge is  
28 also expunged. The civil revocation of a drivers license shall not be expunged prior to a final  
29 disposition of any pending civil or criminal charge based upon the civil revocation. The sheriff,  
30 chief or head of such other arresting agency shall then transmit the copy of the order with a  
31 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the  
32 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.

33 (d) The clerk of superior court in each county in North Carolina shall, as soon as  
34 practicable after each term of court in his county, file with the Administrative Office of the  
35 Courts, the names of those persons granted a discharge under the provisions of this section, and  
36 the Administrative Office of the Courts shall maintain a confidential file containing the names  
37 of persons granted conditional discharges. The information contained in such file shall be  
38 disclosed only to judges of the General Court of Justice of North Carolina for the purpose of  
39 ascertaining whether any person charged with an offense has been previously granted a  
40 discharge.

41 (d1) Notwithstanding subsection (a) of this section and any other provision of law, a  
42 person may file a petition in the court where the person was convicted for expunction of a  
43 misdemeanor conviction from the person's criminal record if the person was convicted for  
44 misdemeanor larceny pursuant to G.S. 14-72(a) more than 10 years prior to the filing of the  
45 petition.

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

47 (1) An affidavit by the petitioner that he has been of good behavior for the  
48 10-year period preceding the filing of the petition, and has not been  
49 convicted of any felony, or misdemeanor other than a traffic violation, under  
50 the laws of the United States or the laws of this State or any other state  
51 during the 10-year period.

- 1           (2)   Verified affidavits of two persons who are not related to the petitioner 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)   A statement that the petition is a motion in the cause in the case wherein the  
6           petitioner was convicted.
- 7           (4)   Affidavits of the clerk of superior court, chief of police, where appropriate,  
8           and sheriff of the county in which the petitioner was convicted and, if  
9           different, the county of which the petitioner is a resident, showing that the  
10          petitioner has not been convicted of a felony or misdemeanor other than a  
11          traffic violation under the laws of this State during the 10-year period  
12          preceding the filing of the petition.
- 13          (5)   An affidavit by the petitioner that no restitution orders or civil judgments  
14          representing amounts ordered for restitution entered against him are  
15          outstanding.

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

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 10-year  
21          period that he deems desirable.

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

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

35          (e)   A person who files a petition for expunction of a criminal record under this section  
36          must pay the clerk of superior court a fee of one hundred twenty-five dollars (\$125.00) at the  
37          time the petition is filed. Fees collected under this subsection shall be deposited in the General  
38          Fund. This subsection does not apply to petitions filed by an indigent."

39          **SECTION 11.** This act becomes effective December 1, 2009, and applies to  
40          petitions for expunctions filed on or after that date.