

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

HOUSE BILL 1329
RATIFIED BILL

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 of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.
- (3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (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) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.



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

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

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

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

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

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

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

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

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

following the decision to defer further proceedings on the offense in question.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

SECTION 3.1. G.S. 15A-146(a1) reads as rewritten:

"(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and all the charges are dismissed, or findings of not guilty or not responsible are made, then a person may apply to have each of those charges expunged if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment. The court shall hold a hearing on the application. If the court finds (i) that the person had not previously received an expungement under this subsection, subsection, or that any previous expungement received under this subsection occurred prior to October 1, 2005 and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offenses that are the subject of the current application, (ii) that the person had not previously received an expungement under G.S. 15A-145 or G.S. 90-96, and (iii) that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been

entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial."

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

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

(a) Whenever any person who ~~has not yet attained the age of 18 years, and~~ 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 this Article or (ii) an enhanced offense under G.S. 14-50.22, and the offense was committed before the person attained the age of 18 years, the court may, without entering a judgment of guilt and with the consent of the defendant, defer further proceedings and place the defendant on probation upon such reasonable terms and conditions as the court may require.

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

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

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

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

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

"§ 14-50.30. Expunction of records.

(a) ~~Whenever any~~ Any person who ~~has not yet attained the age of 18 years and~~ 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, may, if the offense was committed before the person attained the age of 18 years, be eligible to apply for expunction of certain offenses under this Article pursuant to G.S. 15A-145.1. ~~pleads guilty to or is guilty of (i) a Class H felony under this Article or (ii) an enhanced offense under G.S. 14-50.22, 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 of the petitioner in the community in which the petitioner lives, and that the petitioner's character and reputation are good.~~
- ~~(3) If the petition is filed subsequent to conviction of the offense in question, a statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.~~
- ~~(4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State (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) at any time prior to the conviction for the offense in question or during the two-year period following that conviction, whichever applies.~~
- ~~(5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner are outstanding.~~

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

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

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

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

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

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

~~(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A of Chapter 90 or to that paraphernalia included in Article 5B of Chapter 90 pleads guilty to or is found guilty of (i) a misdemeanor under this Article by possessing a controlled substance included within Schedules II through VI of this Article or by possessing drug paraphernalia as prohibited by 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 one gram of cocaine, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions under this Article. Discharge and dismissal under this section or G.S. 90-113.14 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge and dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Controlled Substances Act", Article 5, Chapter 90, the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.

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

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

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

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

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

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.2. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course~~ course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall revoke probation and/or probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall deny application for expunction of all recordation of

defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~ G.S. 15A-145.2. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

~~(a) Whenever any person who has not previously been convicted of any offense under this Article or under any statute of the United States or any state relating to those substances included in Article 5 or 5A or 5B of Chapter 90 pleads guilty to or is found guilty of inhaling or possessing any substance having the property of releasing toxic vapors or fumes in violation of Article 5A of Chapter 90, the court may, without entering a judgment of guilt and with the consent of such person, defer further proceedings and place him on probation upon such reasonable terms and conditions as it may require. Notwithstanding the provisions of G.S. 15A-1342(c) or any other statute or law, probation may be imposed under this section for an offense under this Article for which the prescribed punishment includes only a fine. To fulfill the terms and conditions of probation the court may allow the defendant to participate in a drug education program approved for this purpose by the Department of Health and Human Services. Upon violation of a term or condition, the court may enter an adjudication of guilt and proceed as otherwise provided. Upon fulfillment of the terms and conditions, the court shall discharge such person and dismiss the proceedings against him. Discharge and dismissal under this section shall be without court adjudication of guilt and shall not be deemed a conviction for purposes of this section or for purposes of disqualifications or disabilities imposed by law upon conviction of a crime including the additional penalties imposed for second or subsequent convictions. Discharge and dismissal under this section or G.S. 90-96 may occur only once with respect to any person. Disposition of a case to determine discharge and dismissal under this section at the district court division of the General Court of Justice shall be final for the purpose of appeal. Prior to taking any action to discharge or dismiss under this section the court shall make a finding that the defendant has no record of previous convictions under the "North Carolina Toxic Vapors Act", Article 5A, Chapter 90, the "North Carolina Controlled Substances Act", Article 5, Chapter 90, or the "Drug Paraphernalia Act", Article 5B, Chapter 90.~~

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

~~(1) There is no drug education school within a reasonable distance of the defendant's residence; or~~

- (2) There are specific, extenuating circumstances which make it likely that defendant will not benefit from the program of instruction.

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

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

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

Failure to complete successfully an approved program of instruction at a drug education school shall constitute grounds to revoke probation pursuant to this subsection and deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~G.S. 15A-145.3. For purposes of this subsection, the phrase "failure to complete successfully the prescribed program of instruction at a drug education school" includes failure to attend scheduled classes without a valid excuse, failure to complete the course within 150 days of imposition of probation, willful failure to pay the required fee for the ~~course~~course as provided in G.S. 90-96.01(b), or any other manner in which the person fails to complete the course successfully. The instructor of the course to which a person is assigned shall report any failure of a person to complete successfully the program of instruction to the court which imposed probation. Upon receipt of the instructor's report that the person failed to complete the program successfully, the court shall ~~revoke probation and/or probation, shall not discharge such person, shall not dismiss the proceedings against the person, and shall~~ deny application for expunction of all recordation of defendant's arrest, indictment, or information, trial, finding of guilty, and dismissal and discharge pursuant to ~~this section~~G.S. 15A-145.3. A person may obtain a hearing before the court of original jurisdiction prior to revocation of probation or denial of application for expunction.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(a) Whenever any person who ~~has (i) not yet attained the age of 18 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (i) pleads guilty to or is guilty of a misdemeanor other than a traffic violation, and the offense was committed before the person attained the age of 18 years, or (ii) not yet attained the age of 21 years and has not previously been convicted of any felony, or misdemeanor other than a traffic violation, under the laws of the United States, the laws of this State or any other state, (ii) pleads guilty to or is guilty of a misdemeanor possession of alcohol pursuant to G.S. 18B-302(b)(1), and the offense was committed before the person attained the age of 21 years,~~ he may file a petition in the court where he was convicted for expunction of the misdemeanor from his criminal record. 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, and the petition shall contain, but not be limited to, the following:

- (1) An affidavit by the petitioner that he has been of good behavior for the two-year period since the date of conviction of the misdemeanor in question 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 of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State at any time prior to the conviction for the misdemeanor in question or during the two-year period following that conviction.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

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

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

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two

years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the ~~conviction-offense~~ in question, or (ii) petitioner was not 21 years old at the time of the ~~conviction-offense~~ of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information. No person as to whom such order has been entered shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of his failure to recite or acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made of him for any purpose.

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

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

(d1) Notwithstanding subsection (a) of this section and any other provision of law, a person may file a petition in the court where the person was convicted for expunction of a misdemeanor conviction from the person's criminal record if the person has no prior felony convictions and was convicted for misdemeanor larceny pursuant to G.S. 14-72(a) more than 15 years prior to the filing of the petition.

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

- (1) An affidavit by the petitioner that he has not been convicted of any felony, has been of good behavior for the 15-year period preceding the filing of the petition, and has not been convicted of any misdemeanor other than a traffic violation, under the laws of the United States or the laws of this State or any other state during the 15-year period.
- (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 of the petitioner in the community in which he lives and that his character and reputation are good.
- (3) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) Affidavits of the clerk of superior court, chief of police, where appropriate, and sheriff of the county in which the petitioner was convicted and, if different, the county of which the petitioner is a resident, showing that the petitioner has not been convicted of a felony or misdemeanor other than a traffic violation under the laws of this State during the 10-year period preceding the filing of the petition.
- (5) An affidavit by the petitioner that no restitution orders or civil judgments representing amounts ordered for restitution entered against him are outstanding.

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

The judge to whom the petition is presented is authorized to call upon a probation officer for any additional investigation or verification of the petitioner's conduct during the 10-year period that he deems desirable.

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

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

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

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

In the General Assembly read three times and ratified this the 11th day of August, 2009.

Walter H. Dalton
President of the Senate

Joe Hackney
Speaker of the House of Representatives

Beverly E. Perdue
Governor

Approved _____ .m. this _____ day of _____, 2009