

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009

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SENATE BILL 262
Judiciary II Committee Substitute Adopted 3/30/09
Finance Committee Substitute Adopted 5/12/09

Short Title: Expunctions/Purge Online Databases.

(Public)

Sponsors:

Referred to:

February 23, 2009

A BILL TO BE ENTITLED

AN ACT TO CLARIFY THAT AN ORDER TO EXPUNGE AN INDIVIDUAL'S RECORD SHALL BE FORWARDED BY THE CLERK OF COURT TO ALL APPLICABLE STATE AND LOCAL GOVERNMENT AGENCIES, TO REQUIRE A STATE GOVERNMENT AGENCY TO FORWARD NOTICE OF EXPUNCTION ORDERS RECEIVED BY THE AGENCY TO ANY PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION THAT IS LICENSED BY THE AGENCY TO ACCESS THE AGENCY'S CRIMINAL HISTORY RECORD DATABASE, TO PROVIDE THAT A PRIVATE ENTITY THAT DISSEMINATES CRIMINAL HISTORY RECORDS FOR COMPENSATION HAS A DUTY TO UPDATE THOSE HISTORIES BEFORE DISSEMINATING THEM AND IS SUBJECT TO CIVIL LIABILITY.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A is amended by adding the following new sections to read:

"§ 15A-150. Notification requirements.

(a) Notification to AOC. – The clerk of superior court in each county in North Carolina shall, as soon as practicable after each term of court, file with the Administrative Office of the Courts the names of the following:

- (1) Persons granted a discharge or an expunction under this Article.
- (2) Persons granted an expunction under G.S. 14-50.29 or G.S. 14-50.30.
- (3) Persons granted a conditional discharge or an expunction under G.S. 90-96 or G.S. 90-113.14.
- (4) Persons whose judgments of convictions have been canceled and expunged under G.S. 90-96 or G.S. 90-113.14.

(b) Notification to Other State and Local Agencies. – The clerk of superior court in each county in North Carolina shall send a certified copy of an order granting an expunction to a person named in subsection (a) of this section to all of the agencies listed in this subsection. An agency receiving an order under this subsection shall expunge from its records all entries made as a result of the charge or conviction ordered expunged.

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles and the Department of Correction.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.



1 (c) Notification to SBI and FBI. – An arresting agency that receives a certified copy of
2 an order under this section shall forward a copy of the order with the form supplied by the State
3 Bureau of Investigation to the State Bureau of Investigation. The State Bureau of Investigation
4 shall forward the order to the Federal Bureau of Investigation.

5 (d) Notification to Private Entities. – A State agency that receives a certified copy of an
6 order under this section shall notify any private entity with which it has a licensing agreement
7 for bulk extracts of data from the agency criminal record database to delete the record in
8 question. The private entity shall notify any other entity to which it sells any compilation of the
9 information to delete the record in question from its database.

10 **"§ 15A-151. AOC maintain confidential file.**

11 The Administrative Office of the Courts shall maintain a confidential file containing the
12 names of those people for whom it received a notice under G.S. 15A-150. The information
13 contained in the file may be disclosed only as follows:

14 (1) To a judge of the General Court of Justice of North Carolina for the purpose
15 of ascertaining whether a person charged with an offense has been
16 previously granted a discharge or an expunction.

17 (2) To a person requesting confirmation of the person's own discharge or
18 expunction, as provided in G.S. 15A-152.

19 (3) To the General Court of Justice of North Carolina in response to a subpoena
20 or other court order issued pursuant to a civil action under G.S. 15A-152.

21 **"§ 15A-152. Civil liability for dissemination of certain criminal history information.**

22 (a) Duty to Delete Record. – A private entity that compiles and disseminates for
23 compensation criminal history record information shall destroy and may not disseminate any
24 information in the possession of the entity with respect to which the entity has received a notice
25 to delete the record in question.

26 (b) Dissemination of Information. – Unless the entity is regulated by the federal Fair
27 Credit Reporting Act (15 U.S.C. § 1681, et seq.) or the Gramm-Leach-Bliley Act (15 U.S.C. §§
28 6801 to 6809), a private entity described by subsection (a) of this section that is licensed to
29 access a State agency's criminal history record database may disseminate that information only
30 if, within the 90-day period preceding the date of dissemination, the entity originally obtained
31 the information or received the information as an updated record information to its database.
32 The private entity must notify the State agency from which it receives the information of any
33 other entity to which it sells any compilation of the information.

34 (c) Civil Liability. – A private entity that disseminates information in violation of this
35 section is liable for any damages that are sustained as a result of the violation by the person
36 who is the subject of that information. A person who prevails in an action brought under this
37 section is also entitled to recover court costs and reasonable attorneys' fees.

38 (d) Certificate of Verification. – Prior to filing an action under this section, a person
39 who is the subject of a record that has been expunged may apply to the Administrative Office
40 of the Courts for a certificate verifying that the person is the subject of a record that has been
41 expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The
42 application must include a sworn affidavit attesting, under penalty of perjury, that the applicant
43 is the person who was the subject of the record in question and identifying the specific case
44 expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant
45 affidavit under this subsection may not disclose the nature of content of the application, except
46 as required in a court action related to the application. Unless made part of the record of a
47 subsequent court proceeding, a certificate of verification and an application for the certificate
48 are not public records under G.S. 132-1. The Administrative Office of the Courts may establish
49 procedures pertaining to the application for and issuance of certificates of verification."

50 **SECTION 2.** G.S. 14-50.29(e) reads as rewritten:

1 ~~"(e) The clerk of superior court in each county in North Carolina shall, as soon as~~
2 ~~practicable after each term of court in his county, file with the Administrative Office of the~~
3 ~~Courts the names of those persons granted a discharge under the provisions of this section, and~~
4 ~~the Administrative Office of the Courts shall maintain a confidential file containing the names~~
5 ~~of persons granted conditional discharges. The information contained in such file shall be~~
6 ~~disclosed only to judges of the General Court of Justice of North Carolina for the purpose of~~
7 ~~ascertaining whether any person charged with an offense has been previously granted a~~
8 ~~discharge.~~shall notify State and local agencies of the court's order as provided in
9 G.S. 15A-150."

10 **SECTION 3.** G.S. 14-50.30(b) reads as rewritten:

11 "(b) If the court, after hearing, finds that the petitioner has remained of good behavior
12 and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two
13 years from the date of conviction of the offense in question, the petitioner has no outstanding
14 restitution orders or civil judgments representing amounts ordered for restitution entered
15 against him, and the petitioner had not attained the age of 18 years at the time of the conviction
16 in question, it shall order that such person be restored, in the contemplation of the law, to the
17 status occupied by the petitioner before such arrest or indictment or ~~information.~~information
18 and that the conviction be expunged from the records of the court. No person as to whom such
19 order has been entered shall be held thereafter under any provision of any laws to be guilty of
20 perjury or otherwise giving a false statement by reason of the person's failure to recite or
21 acknowledge such arrest, or indictment, information, or trial, or response to any inquiry made
22 of the person for any purpose. The court shall also ~~order that the said conviction be expunged~~
23 ~~from the records of the court, and direct all law enforcement agencies~~agencies, the Department
24 of Correction, the Division of Motor Vehicles, and any other State or local government
25 agencies identified by the petitioner as bearing record of the same conviction to expunge their
26 records of the petitioner's conviction as the result of a criminal charge. The clerk shall forward
27 a certified copy of the order to the sheriff, chief of police, or other arresting agency. The sheriff,
28 chief, or head of such other arresting agency shall then transmit the copy of the order with a
29 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the
30 State Bureau of Investigation shall forward the order to the Federal Bureau of
31 Investigation.~~shall notify State and local agencies of the court's order as provided in~~
32 G.S. 15A-150."

33 **SECTION 4.(a)** G.S. 15A-145(c) reads as rewritten:

34 "(c) The court shall also order that the ~~said~~misdemeanor conviction, or a civil
35 revocation of a drivers license as the result of a criminal charge, be expunged from the records
36 of the court, and court. The court shall direct all law-enforcement agencies, the Department of
37 Correction, including the Division of Motor Vehicles, and any other State or local government
38 agencies identified by the petitioner as bearing record of the same to expunge their records of
39 the petitioner's conviction or a civil revocation of a drivers license as the result of a criminal
40 charge. This subsection does not apply to civil or criminal charges based upon the civil
41 revocation, or to civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy
42 of the order to the sheriff, chief of police, or other arresting agency.~~shall notify State and local~~
43 agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified
44 copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation
45 provided the underlying criminal charge is also expunged. The civil revocation of a drivers
46 license shall not be expunged prior to a final disposition of any pending civil or criminal charge
47 based upon the civil revocation. ~~The sheriff, chief or head of such other arresting agency shall~~
48 ~~then transmit the copy of the order with a form supplied by the State Bureau of Investigation to~~
49 ~~the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order~~
50 ~~to the Federal Bureau of Investigation."~~

51 **SECTION 4.(b)** G.S. 15A-145(d) reads as rewritten:

1 ~~"(d) The clerk of superior court in each county in North Carolina shall, as soon as~~
2 ~~practicable after each term of court in his county, file with the Administrative Office of the~~
3 ~~Courts, the names of those persons granted a discharge under the provisions of this section, and~~
4 ~~the Administrative Office of the Courts shall maintain a confidential file containing the names~~
5 ~~of persons granted conditional discharges. The information contained in such file shall be~~
6 ~~disclosed only to judges of the General Court of Justice of North Carolina for the purpose of~~
7 ~~ascertaining whether any person charged with an offense has been previously granted a~~
8 ~~discharge. shall notify State and local agencies of the court's order as provided in~~
9 ~~G.S. 15A-150."~~

10 **SECTION 5.(a)** G.S. 15A-146(b) reads as rewritten:

11 "(b) The court may also order that the said entries, including civil revocations of drivers
12 licenses as a result of the underlying charge, shall be expunged from the records of the court,
13 and direct all law-enforcement agencies, the Department of Correction, including the Division
14 of Motor Vehicles, and any other State or local government agencies identified by the
15 petitioner as bearing record of the same to expunge their records of the entries, including civil
16 revocations of drivers licenses as a result of the underlying charge being expunged. This
17 subsection does not apply to civil or criminal charges based upon the civil revocation, or to
18 civil revocations under G.S. 20-16.2. The clerk shall forward a certified copy of the order to the
19 sheriff, chief of police, or other arresting agency. shall notify State and local agencies of the
20 court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order
21 to the Division of Motor Vehicles for the expunction of a civil revocation provided the
22 underlying criminal charge is also expunged. The civil revocation of a drivers license shall not
23 be expunged prior to a final disposition of any pending civil or criminal charge based upon the
24 civil revocation. The sheriff, chief or head of such other arresting agency shall then transmit the
25 copy of the order with the form supplied by the State Bureau of Investigation to the State
26 Bureau of Investigation, and the State Bureau of Investigation shall forward the order to the
27 Federal Bureau of Investigation. The costs of expunging these records shall not be taxed
28 against the petitioner."

29 **SECTION 5.(b)** G.S. 15A-146(c) reads as rewritten:

30 ~~"(c) The Clerk of Superior Court in each county in North Carolina shall, as soon as~~
31 ~~practicable after each term of court in his county, file with the Administrative Office of the~~
32 ~~Courts, the names of those persons granted an expungement under the provisions of this section~~
33 ~~and the Administrative Office of the Courts shall maintain a confidential file containing the~~
34 ~~names of persons granted such expungement. The information contained in such files shall be~~
35 ~~disclosed only to judges of the General Court of Justice of North Carolina for the purpose of~~
36 ~~ascertaining whether any person charged with an offense has been previously granted an~~
37 ~~expungement. clerk shall notify State and local agencies of the court's order as provided in~~
38 ~~G.S. 15A-150."~~

39 **SECTION 6.** G.S. 15A-147 reads as rewritten:

40 "**§ 15A-147. Expunction of records when charges are dismissed or there are findings of**
41 **not guilty as a result of identity theft.**

42 (a) If any person is named in a charge for an infraction or a crime, either a
43 misdemeanor or a felony, as a result of another person using the identifying information of the
44 named person and the charge against the named person is dismissed, a finding of not guilty is
45 entered, or the conviction is set aside, the named person may apply by petition or written
46 motion to the court where the charge was last pending on a form approved by the
47 Administrative Office of the Courts supplied by the clerk of court for an order to expunge from
48 all official records any entries relating to the person's apprehension, charge, or trial. The court,
49 after notice to the district attorney, shall hold a hearing on the motion or petition and, upon
50 finding that the person's identity was used without permission and the charges were dismissed
51 or the person was found not guilty, the court shall order the expunction.

1 (b) No person as to whom such an order has been entered under this section shall be
2 held thereafter under any provision of any law to be guilty of perjury, or to be guilty of
3 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
4 of the person's failure to recite or acknowledge any expunged entries concerning apprehension,
5 charge, or trial.

6 (c) The court shall also order that the said entries shall be expunged from the records of
7 the court and direct all law enforcement agencies, the Department of Correction, the Division
8 of Motor Vehicles, or any other State or local government agencies identified by the petitioner
9 as bearing record of the same to expunge their records of the entries. The clerk shall forward a
10 certified copy of the order to the sheriff, chief of police, or other charging agency; and, when
11 applicable, to the Division of Motor Vehicles and any other State or local agency. The sheriff,
12 chief, or head of such other charging agency shall then transmit the copy of the order with the
13 form supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the
14 State Bureau of Investigation shall forward the order to the Federal Bureau of Investigation.
15 Upon receipt of a certified copy of the order, the agency must purge its records as required by
16 this section. notify State and local agencies of the court's order as provided in G.S. 15A-150.
17 The costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be
18 taxed against the petitioner.

19 (d) The Division of Motor Vehicles shall expunge from its records entries made as a
20 result of the charge or conviction ordered expunged under this section. The Division of Motor
21 Vehicles shall also reverse any administrative actions taken against a person whose record is
22 expunged under this section as a result of the charges or convictions expunged, including the
23 assessment of drivers license points and drivers license suspension or revocation.
24 Notwithstanding any other provision of this Chapter, the Division of Motor Vehicles shall
25 provide to the person whose motor vehicle record is expunged under this section a certified
26 corrected driver history at no cost and shall reinstate at no cost any drivers license suspended or
27 revoked as a result of a charge or conviction expunged under this section.

28 (e) ~~Any~~ The Department of Correction and any other applicable State or local
29 government agency shall expunge ~~from its records entries made as a result of the charge or~~
30 ~~conviction ordered expunged under this section. as provided in G.S. 15A-150.~~ The agency shall
31 also reverse any administrative actions taken against a person whose record is expunged under
32 this section as a result of the charges or convictions expunged. Notwithstanding any other
33 provision of law, the normal fee for any reinstatement of a license or privilege resulting under
34 this section shall be waived.

35 (f) Any insurance company that charged any additional premium based on insurance
36 points assessed against a policyholder as a result of a charge or conviction that was expunged
37 under this section shall refund those additional premiums to the policyholder upon notification
38 of the expungement."

39 **SECTION 7.** G.S. 15A-149(b) reads as rewritten:

40 "(b) The order of expunction shall include an instruction that any entries relating to the
41 person's apprehension, charge, or trial shall be expunged from the records of the court and
42 direct all law enforcement agencies, the Department of Correction, the Division of Motor
43 Vehicles, or any other State or local government agencies identified by the petitioner as bearing
44 record of the same to expunge their records of the entries. The clerk shall forward a certified
45 copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable,
46 to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or
47 head of such other charging agency shall then transmit the copy of the order with the form
48 supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State
49 Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon
50 receipt of a certified copy of the order, the agency must purge its records as required by this
51 section. notify State and local agencies of the court's order as provided in G.S. 15A-150. The

1 costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be
2 taxed against the petitioner."

3 **SECTION 8.(a)** G.S. 90-96(b) reads as rewritten:

4 "(b) Upon the dismissal of such person, and discharge of the proceedings against him
5 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
6 of the offense, may apply to the court for an order to expunge from all official records ~~(other
7 than the confidential file to be retained by the Administrative Office of the Courts under
8 subsection (e))~~ records, other than the confidential file retained by the Administrative Office of
9 the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment or information,
10 trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall
11 attach to the application the following:

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

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

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

40 The court shall also order that said conviction and the records relating thereto be expunged
41 from the records of the court, and direct all law-enforcement ~~agencies~~ agencies, the Department
42 of Correction, the Division of Motor Vehicles, and any other State or local government
43 agencies identified by the petitioner as bearing records of the same to expunge their records of
44 the conviction. The clerk shall ~~forward a certified copy of the order to the sheriff, chief of
45 police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting
46 agency, as appropriate, shall forward such order to the State Bureau of Investigation with a
47 form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall
48 forward the court order in like manner to the Federal Bureau of Investigation.~~ notify State and
49 local agencies of the court's order as provided in G.S. 15A-150."

50 **SECTION 8.(b)** G.S. 90-96(c) is repealed.

51 **SECTION 8.(c)** G.S. 90-96(d) reads as rewritten:

1 "(d) Whenever any person is charged with a misdemeanor under this Article by
2 possessing a controlled substance included within Schedules II through VI of this Article or a
3 felony under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, upon dismissal by
4 the State of the charges against him, upon entry of a nolle prosequi, or upon a finding of not
5 guilty or other adjudication of innocence, such person may apply to the court for an order to
6 expunge from all official records all recordation relating to his arrest, indictment or
7 information, or trial. If the court determines, after hearing that such person was not over 21
8 years of age at the time any of the proceedings against him occurred, it shall enter such order.
9 The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.
10 No person as to whom such order has been entered shall be held thereafter under any provision
11 of any law to be guilty of perjury or otherwise giving a false statement by reason of his failures
12 to recite or acknowledge such arrest, or indictment or information, or trial in response to any
13 inquiry made of him for any purpose."

14 **SECTION 8.(d)** G.S. 90-96(e) reads as rewritten:

15 "(e) Whenever any person who has not previously been convicted of an offense under
16 this Article or under any statute of the United States or any state relating to controlled
17 substances included in any schedule of this Article or to that paraphernalia included in Article
18 5B of Chapter 90 pleads guilty to or has been found guilty of (i) a misdemeanor under this
19 Article by possessing a controlled substance included within Schedules II through VI of this
20 Article, or by possessing drug paraphernalia as prohibited by G.S. 90-113.21, or (ii) a felony
21 under G.S. 90-95(a)(3) by possessing less than one gram of cocaine, the court may, upon
22 application of the person not sooner than 12 months after conviction, order cancellation of the
23 judgment of conviction and expunction of the records of his arrest, indictment, or information,
24 trial and conviction. A conviction in which the judgment of conviction has been canceled and
25 the records expunged pursuant to this section shall not be thereafter deemed a conviction for
26 purposes of this section or for purposes of disqualifications or liabilities imposed by law upon
27 conviction of a crime including the additional penalties imposed for second or subsequent
28 convictions of this Article. Cancellation and expunction under this section may occur only once
29 with respect to any person. Disposition of a case under this section at the district court division
30 of the General Court of Justice shall be final for the purpose of appeal.

31 The granting of an application filed under this section shall cause the issue of an order to
32 expunge from all official records ~~(other than the confidential file to be retained by the~~
33 ~~Administrative Office of the Courts under subsection (e)) records, other than the confidential~~
34 file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation
35 relating to the petitioner's arrest, indictment, or information, trial, finding of guilty, judgment of
36 conviction, cancellation of the judgment, and expunction of records pursuant to this section.

37 The judge to whom the petition is presented is authorized to call upon a probation officer
38 for additional investigation or verification of the petitioner's conduct since conviction. If the
39 court determines that the petitioner was convicted of (i) a misdemeanor under this Article for
40 possessing a controlled substance included within Schedules II through VI of this Article, or for
41 possessing drug paraphernalia as prohibited in G.S. 90-113.21, or (ii) a felony under
42 G.S. 90-95(a)(3) for possession of less than one gram of cocaine, that he was not over 21 years
43 of age at the time of the offense, that he has been of good behavior since his conviction, that he
44 has successfully completed a drug education program approved for this purpose by the
45 Department of Health and Human Services, and that he has not been convicted of a felony or
46 misdemeanor other than a traffic violation under the laws of this State at any time prior to or
47 since the conviction for the offense in question, it shall enter an order of expunction of the
48 petitioner's court record. The effect of such order shall be to restore the petitioner in the
49 contemplation of the law to the status he occupied before arrest or indictment or information or
50 conviction. No person as to whom such order was entered shall be held thereafter under any
51 provision of any law to be guilty of perjury or otherwise giving a false statement by reason of

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

7 The court shall also order that all law-enforcement ~~agencies~~ agencies, the Department of
8 Correction, the Division of Motor Vehicles, and any other State or local government agency
9 identified by the petitioner as bearing records of the conviction and records relating thereto
10 expunge their records of the conviction. The clerk shall ~~forward a certified copy of the order to~~
11 ~~the sheriff, chief of police, or other arresting agency, as appropriate, and the arresting agency~~
12 ~~shall forward the order to the State Bureau of Investigation with a form supplied by the State~~
13 ~~Bureau of Investigation. The State Bureau of Investigation shall forward the court order in like~~
14 ~~manner to the Federal Bureau of Investigation.~~ notify State and local agencies of the court's
15 order as provided in G.S. 15A-150.

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

25 **SECTION 9.(a)** G.S. 90-113.14(b) reads as rewritten:

26 "(b) Upon the dismissal of such person, and discharge of the proceedings against him
27 under subsection (a) of this section, such person, if he were not over 21 years of age at the time
28 of the offense, may apply to the court for an order to expunge from all official ~~records (other~~
29 ~~than the confidential file to be retained by the Administrative Office of the Courts under~~
30 ~~subsection (c)) records, other than the confidential file retained by the Administrative Office of~~
31 ~~the Courts under G.S. 15A-151, all recordation relating to his arrest, indictment or information,~~
32 ~~trial, finding of guilty, and dismissal and discharge pursuant to this section. The applicant shall~~
33 ~~attach to the application the following:~~

- 34 (1) An affidavit by the applicant that he has been of good behavior during the
35 period of probation since the decision to defer further proceedings on the
36 misdemeanor in question and has not been convicted of any felony, or
37 misdemeanor, other than a traffic violation, under the laws of the United
38 States or the laws of this State or any other state;
- 39 (2) Verified affidavits by two persons who are not related to the applicant or to
40 each other by blood or marriage, that they know the character and reputation
41 of the petitioner in the community in which he lives, and that his character
42 and reputation are good;
- 43 (3) Affidavits of the clerk of superior court, chief of police, where appropriate,
44 and sheriff of the county in which the petitioner was convicted, and, if
45 different, the county of which the petitioner is a resident, showing that the
46 applicant has not been convicted of a felony or misdemeanor other than a
47 traffic violation under the laws of this State at any time prior to the
48 conviction for the misdemeanor in question or during the period of probation
49 following the decision to defer further proceedings on the misdemeanor in
50 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 dismissed and the proceedings
5 against him discharged 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.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150."

20 **SECTION 9.(b)** G.S. 90-113.14(c) is repealed.

21 **SECTION 9.(c)** G.S. 90-113.14(d) reads as rewritten:

22 "(d) Whenever any person is charged with a misdemeanor under this Article by
23 possessing a controlled substance included within Schedules II through VI of this Article, or by
24 possessing drug paraphernalia as prohibited by G.S. 90-113.21 upon dismissal by the State of
25 the charges against him or upon entry of a nolle prosequi or upon a finding of not guilty or
26 other adjudication of innocence, such person may apply to the court for an order to expunge
27 from all official records all recordation relating to his arrest, indictment, or information, and
28 trial. If the court determines, after hearing that such person was not over 21 years of age at the
29 time any of the proceedings against him occurred, it shall enter such order. The clerk shall
30 notify State and local agencies of the court's order as provided in G.S. 15A-150. No person as
31 to whom such order has been entered shall be held thereafter under any provision of any law to
32 be guilty of perjury or otherwise giving a false statement by reason of his failures to recite or
33 acknowledge such arrest, or indictment, or information, or trial in response to any inquiry made
34 of him for any purpose."

35 **SECTION 9.(d)** G.S. 90-113.14(e) reads as rewritten:

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

1 The granting of an application filed under this section shall cause the issue of an order to
2 expunge from all official records ~~(other than the confidential file to be retained by the~~
3 ~~Administrative Office of the Courts under subsection (e))~~ records, other than the confidential
4 file retained by the Administrative Office of the Courts under G.S. 15A-151, all recordation
5 relating to his arrest, indictment, or information, trial, finding of guilty, judgment of conviction,
6 cancellation of the judgment, and expunction of records pursuant to this section.

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

27 The court shall also ~~order that all law enforcement agencies bearing records of the~~
28 ~~conviction and records relating thereto to expunge their records of the conviction. The clerk~~
29 ~~shall forward a certified copy of the order to the sheriff, chief of police, or other arresting~~
30 ~~agency, as appropriate, and the arresting agency shall forward the order to the State Bureau of~~
31 ~~Investigation with a form supplied by the State Bureau of Investigation. The State Bureau of~~
32 ~~Investigation shall forward the court order in like manner to the Federal Bureau of~~
33 ~~Investigation notify State and local agencies of the court's order as provided in G.S. 15A-150.~~

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

43 **SECTION 10.** This act becomes effective October 1, 2009.