

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
House Committee Substitute Favorable 7/9/09
House Committee Substitute #2 Adopted 8/6/09

Short Title: Expunctions/Purge Online Databases.

(Public)

Sponsors:

Referred to:

February 23, 2009

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

13 The General Assembly of North Carolina enacts:

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

16 "**§ 15A-150. Notification requirements.**

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

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

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

- 31 (1) The sheriff, chief of police, or other arresting agency.
32 (2) When applicable, the Division of Motor Vehicles and the Department of
33 Correction.



1 (3) Any State or local agency identified by the petition as bearing record of the
2 offense that has been expunged.

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

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

13 **"§ 15A-151. AOC maintain confidential file.**

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

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

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

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

24 **"§ 15A-152. Civil liability for dissemination of certain criminal history information.**

25 (a) Duty to Delete Record. – A private entity that holds itself out as being in the
26 business of compiling and disseminating criminal history record information for compensation
27 shall destroy and shall not disseminate any information in the possession of the entity with
28 respect to which the entity has received a notice to delete the record in question.

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

37 (c) Civil Liability. – A private entity subject to the provisions of this section that
38 disseminates information in violation of this section is liable for any damages that are sustained
39 as a result of the violation by the person who is the subject of that information. A person who
40 prevails in an action brought under this section is also entitled to recover court costs and
41 reasonable attorneys' fees. This subsection does not apply to an entity regulated by and subject
42 to the civil liability remedies of the federal Fair Credit Reporting Act, 15 U.S.C. § 1681, et seq.,
43 or the Gramm Leach-Bliley Act, 15 U.S.C. 6801-6809, et seq.

44 (d) Certificate of Verification. – Prior to filing an action under this section, a person
45 who is the subject of a record that has been expunged may apply to the Administrative Office
46 of the Courts for a certificate verifying that the person is the subject of a record that has been
47 expunged and that notice of the expunction was made in accordance with G.S. 15A-150. The
48 application must include a sworn affidavit attesting, under penalty of perjury, that the applicant
49 is the person who was the subject of the record in question and identifying the specific case
50 expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant
51 affidavit under this subsection may not disclose the nature of content of the application, except

1 as required in a court action related to the application. Unless made part of the record of a
2 subsequent court proceeding, a certificate of verification and an application for the certificate
3 are not public records under G.S. 132-1. The Administrative Office of the Courts may establish
4 procedures pertaining to the application for and issuance of certificates of verification."

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

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

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

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

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

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

1 based upon the civil revocation. ~~The sheriff, chief or head of such other arresting agency shall~~
2 ~~then transmit the copy of the order with a form supplied by the State Bureau of Investigation to~~
3 ~~the State Bureau of Investigation, and the State Bureau of Investigation shall forward the order~~
4 ~~to the Federal Bureau of Investigation."~~

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

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

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

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

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

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

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

45 "**§ 15A-147. Expunction of records when charges are dismissed or there are findings of**
46 **not guilty as a result of identity theft.**

47 (a) If any person is named in a charge for an infraction or a crime, either a
48 misdemeanor or a felony, as a result of another person using the identifying information of the
49 named person and the charge against the named person is dismissed, a finding of not guilty is
50 entered, or the conviction is set aside, the named person may apply by petition or written
51 motion to the court where the charge was last pending on a form approved by the

1 Administrative Office of the Courts supplied by the clerk of court for an order to expunge from
2 all official records any entries relating to the person's apprehension, charge, or trial. The court,
3 after notice to the district attorney, shall hold a hearing on the motion or petition and, upon
4 finding that the person's identity was used without permission and the charges were dismissed
5 or the person was found not guilty, the court shall order the expunction.

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

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

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

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

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

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

45 "(b) The order of expunction shall include an instruction that any entries relating to the
46 person's apprehension, charge, or trial shall be expunged from the records of the court and
47 direct all law enforcement agencies, the Department of Correction, the Division of Motor
48 Vehicles, or any other State or local government agencies identified by the petitioner as bearing
49 record of the same to expunge their records of the entries. The clerk shall forward a certified
50 copy of the order to the sheriff, chief of police, or other charging agency; and, when applicable,
51 to the Division of Motor Vehicles and any other State or local agency. The sheriff, chief, or

1 ~~head of such other charging agency shall then transmit the copy of the order with the form~~
2 ~~supplied by the State Bureau of Investigation to the State Bureau of Investigation, and the State~~
3 ~~Bureau of Investigation shall forward the order to the Federal Bureau of Investigation. Upon~~
4 ~~receipt of a certified copy of the order, the agency must purge its records as required by this~~
5 ~~section. notify State and local agencies of the court's order as provided in G.S. 15A-150. The~~
6 ~~costs of expunging ~~these records~~ the records, as required under G.S. 15A-150, shall not be~~
7 ~~taxed against the petitioner."~~

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

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

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

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

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

45 The court shall also order that said conviction and the records relating thereto be expunged
46 from the records of the court, and direct all law-enforcement ~~agencies~~ agencies, the Department
47 of Correction, the Division of Motor Vehicles, and any other State or local government
48 agencies identified by the petitioner as bearing records of the same to expunge their records of
49 the conviction. The clerk shall forward a certified copy of the order to the sheriff, chief of
50 police or other arresting agency, as appropriate, and the sheriff, chief of police or other arresting
51 agency, as appropriate, shall forward such order to the State Bureau of Investigation with a

1 form supplied by the State Bureau of Investigation. The State Bureau of Investigation shall
2 forward the court order in like manner to the Federal Bureau of Investigation, notify State and
3 local agencies of the court's order as provided in G.S. 15A-150."

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

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

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

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

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

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

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

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

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

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

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

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

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

1 traffic violation under the laws of this State at any time prior to the
2 conviction for the misdemeanor in question or during the period of probation
3 following the decision to defer further proceedings on the misdemeanor in
4 question.

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

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

16 The court shall also order that said conviction and the records relating thereto be expunged
17 from the records of the court, and direct all law-enforcement agencies bearing records of the
18 same to expunge their records of the conviction. The clerk shall forward a certified copy of the
19 order to the sheriff, chief of police or other arresting agency, as appropriate, and the sheriff,
20 chief of police or other arresting agency, as appropriate, shall forward such order to the State
21 Bureau of Investigation with a form supplied by the State Bureau of Investigation. The State
22 Bureau of Investigation shall forward the court order in like manner to the Federal Bureau of
23 Investigation notify State and local agencies of the court's order as provided in G.S. 15A-150."

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

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

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

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

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

50 "(e) Whenever any person who has not previously been convicted of an offense under
51 this Article or under any statute of the United States or any state relating to controlled

1 substances included in any schedule of this Article or to that paraphernalia included in Article
2 5B of Chapter 90 pleads guilty to or has been found guilty of a misdemeanor under this Article
3 by possessing a controlled substance included within Schedules II through VI of this Article,
4 the court may, upon application of the person not sooner than 12 months after conviction, order
5 cancellation of the judgment of conviction and expunction of the records of his arrest,
6 indictment, or information, trial and conviction. A conviction in which the judgment of
7 conviction has been cancelled and the records expunged pursuant to this section shall not be
8 thereafter deemed a conviction for purposes of this section or for purposes of disqualifications
9 or liabilities imposed by law upon conviction of a crime including the additional penalties
10 imposed for second or subsequent convictions of this Article. Cancellation and expunction
11 under this section may occur only once with respect to any person. Disposition of a case under
12 this section at the district court division of the General Court of Justice shall be final for the
13 purpose of appeal.

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

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

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

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

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

5 **SECTION 10.** This act becomes effective October 1, 2010.