

**GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2009**

**SESSION LAW 2010-174
HOUSE BILL 726**

AN ACT TO MAKE TECHNICAL AND CONFORMING CHANGES TO STATUTES RELATED TO EXPUNCTION OF RECORDS; TO REQUIRE STATE AND NATIONAL CRIMINAL RECORD CHECKS WHEN EXPUNGING RECORDS; AND TO REQUIRE SEX OFFENDERS RESIDING IN THIS STATE TO REGISTER AS A SEX OFFENDER FOR CONVICTIONS OBTAINED OUTSIDE THIS STATE.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 14-50.30 reads as rewritten:

"§ 14-50.30. Expunction of records.

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, 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.

~~information and that the conviction be expunged from the records of the court, agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as conviction petitioner's shall notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 2. G.S. 15A-145(a) reads as rewritten:

"(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, 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) 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.~~
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (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."

SECTION 3. G.S. 15A-145(d1) reads as rewritten:

"(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.~~
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Justice using any information required by

the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

- (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~~15-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~~15-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 ~~10-15~~ 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."

SECTION 4. G.S. 15A-145.1 reads as rewritten:

"§ 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.~~
- (4a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.
- (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~~the petitioner, 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.~~information, and that the record be expunged from the records of the court. 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 agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the petitioner's criminal charge and any conviction as the result of a criminal resulting from the 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.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150.

(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 5. G.S. 15A-145.2 reads as rewritten:

"§ 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(e))~~ records, other than the confidential files retained under G.S. 15A-151, all recordation relating to ~~his~~ the person's 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~~ petitioner that he or she 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~~ 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 or she lives, and that ~~his~~ the petitioner's 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.~~
- (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

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 or her dismissed and that ~~he~~ the person 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~~ the person 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~~the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that ~~said conviction and the records relating thereto~~all records of the proceeding be expunged from the records of the court and direct all law enforcement ~~agencies~~agencies, the Department of Correction, the Division of Motor Vehicles, and any other State and local government agencies identified by the petitioner as bearing records of the same to expunge their records of the ~~conviction~~proceeding. 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.~~notify State and local agencies of the court's order as provided in G.S. 15A-150.

(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~~the person, 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 or her 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. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. 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~~the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her 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~~the person's 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(e))~~records, other than the confidential

files retained under G.S. 15A-151, 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~~ the petitioner was not over 21 years of age at the time of the offense, that ~~he~~ the petitioner has been of good behavior since his or her conviction, that ~~he~~ the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that ~~he~~ 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 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~~ the petitioner 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~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her 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~~ agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as 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.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150.

~~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 6. G.S. 15A-145.3 reads as rewritten:

"§ 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 or she 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(e))~~ records, other than the confidential files retained under G.S. 15A-151, all recordation relating to ~~his~~ the person's 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~~ petitioner that the petitioner 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~~ 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~~ the petitioner lives, and that his or her 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.~~
- (3a) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal record check by the Department of Justice using any information required by the Administrative Office of the Courts to identify the individual and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be forwarded to the Department of Justice and to the Administrative Office of the Courts, which shall conduct the searches and report their findings to the court.

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~~ the person dismissed and that he or she 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~~ the person 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~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her for any purpose.

The court shall also order that ~~said conviction and the records relating thereto~~ all records of the proceeding 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 proceeding~~. 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.~~ notify State and local agencies of the court's order as provided in G.S. 15A-150.

(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~~ the person 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~~ the person's 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. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. 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~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or trial in response to any inquiry made of him or her 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~~ the person's 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(e))~~ records, other than the confidential files retained under G.S. 15A-151, all recordation relating to ~~his~~ the person'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 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~~ the petitioner was not over 21 years of age at the time of the offense, that the petitioner ~~he~~ has been of good behavior since his or her conviction, that the petitioner ~~he~~ has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and that the petitioner ~~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~~ the person's failures to recite or acknowledge such arrest, or indictment or information, or conviction, or trial in response to any inquiry made of him or her 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 clerk 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, notify State and local agencies of the court's order as provided in G.S. 15A-150.~~

~~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 7. G.S. 15A-150 reads as rewritten:

"§ 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~~ a conditional discharge under ~~G.S. 14-50.29 or G.S. 14-50.30~~ G.S. 14-50.29.
- (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~~ expunged, except as provided in G.S. 15A-151.

- (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.

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

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

SECTION 8. G.S. 15A-151 reads as rewritten:

"§ 15A-151. ~~AOC maintain confidential file.~~**Confidential agency files; exceptions to expunction.**

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

- (1) To a judge of the General Court of Justice of North Carolina for the purpose of ascertaining whether a person charged with an offense has been previously granted a discharge or an expunction.
- (2) To a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152.
- (3) To the General Court of Justice of North Carolina in response to a subpoena or other court order issued pursuant to a civil action under G.S. 15A-152.

(b) All agencies required under G.S. 15A-150 to expunge from records all entries made as a result of a charge or conviction ordered expunged who maintain a licensing agreement to provide record information to a private entity shall maintain a confidential file containing information verifying the expunction and subsequent notification to private entities as required by G.S. 15A-150(d). The information contained in the file shall be disclosed only to a person requesting confirmation of expunction of the record of the person's own discharge or expunction, as provided in G.S. 15A-152.

(c) The Division of Motor Vehicles shall not be required to expunge a record if the expunction of the record is expressly prohibited by the federal Commercial Motor Vehicle Safety Act of 1986, the federal Motor Carrier Safety Improvement Act of 1999, or regulations adopted pursuant to either act."

SECTION 9. G.S. 15A-152 reads as rewritten:

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

(a) Duty to Delete Record. – A private entity that holds itself out as being in the business of compiling and disseminating criminal history record information for compensation shall destroy and shall not disseminate any information in the possession of the entity with respect to which the entity has received a notice to delete the record in question. The private entity shall delete the record within the specified time and pursuant to the terms of the licensing agreement with the State agency. If the license does not specify a time for deletion, or if no license agreement exists between the private entity and state agency, the private entity shall delete the record within 10 business days of receiving notice to delete the record in question.

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

private entity must notify the State agency from which it receives the information of any other entity to which it subsequently provides a bulk extract of the information.

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

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

(e) **Notice of Record Removal.** – Prior to filing an action under this section, a person who is the subject of a record that has been expunged may request a notice of record removal of the expunction and subsequent notification to private entities as required by G.S. 15A-150(d) from an agency required under G.S. 15A-150 to expunge that person's record who maintains a licensing agreement to provide record information to a private entity. The application must include a sworn affidavit attesting, under penalty of perjury, that the applicant is the person who was the subject of the record in question and identifying the specific case expunged. A notary or official taking an acknowledgment, oath, or affirmation of an applicant's affidavit under this subsection may not disclose the nature or content of the application, except as required in a court action related to the application. Unless made part of the record of a subsequent court proceeding, a notice of record removal and an application for the notice are not public records under G.S. 132-1. State and local agencies may establish procedures pertaining to the application for and issuance of notices of record removal."

SECTION 10. G.S. 90-96(b) reads as rewritten:

"(b) Upon the discharge of such person, and dismissal of the proceedings against ~~him~~ the person under subsection (a) or (a1) of this section, such person, if he ~~were~~ or she was 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).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agencies identified by the petitioner as notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 11. G.S. 90-96(d) reads as rewritten:

"(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~~ such person, 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). ~~The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 12. G.S. 90-96(e) reads as rewritten:

"(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. 90-113.22 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).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, agencies, the Department of Correction, the Division of Motor Vehicles, and any other State or local government agency identified by the petitioner as notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 13. G.S. 90-113.14(b) reads as rewritten:

"(b) Upon the dismissal of such person, and discharge of the proceedings against ~~him~~ the person under subsection (a) or (a1) of this section, such person, if he or she ~~was~~ 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).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 14. G.S. 90-113.14(d) reads as rewritten:

"(d) Whenever any person is charged with a misdemeanor under this Article or possessing drug paraphernalia as prohibited by G.S. 90-113.22 upon dismissal by the State of the charges against him or her 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). ~~The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 15. G.S. 90-113.14(e) reads as rewritten:

"(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 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, 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).

~~other than the confidential file retained by the Administrative Office of the Courts under G.S. 15A-151, notify State and local agencies of the court's order as provided in G.S. 15A-150."~~

SECTION 16.(a) Section 19(e) of S.L. 2006-247 reads as rewritten:

"**SECTION 19.(e)** Section 19(a) of this act becomes effective December 1, 2006, and applies to all offenses committed ~~on~~ prior to, on, or after that date and to all individuals who move into this State ~~on~~ prior to, on, or after that date. The remainder of this section becomes effective December 1, 2006, and applies to all applications for a drivers license, learner's permit, instruction permit, or special identification card submitted on or after that date."

SECTION 16.(b) This section becomes effective October 1, 2010, and applies to any person required to register as a sex offender under Article 27A of Chapter 14 of the General Statutes, any person serving an active sentence or on supervised probation, parole, or

post-release supervision, for any offense, on or after that date, and any person convicted of any felony offense on or after that date.

SECTION 17. Sections 7, 8, and 9, of this act become effective October 1, 2010. Except as otherwise provided in this act, the remainder of this act becomes effective October 1, 2010, and applies to petitions for expunctions filed on or after that date.

In the General Assembly read three times and ratified this the 7th day of July, 2010.

s/ Walter H. Dalton
President of the Senate

s/ Joe Hackney
Speaker of the House of Representatives

s/ Beverly E. Perdue
Governor

Approved 4:12 p.m. this 2nd day of August, 2010