

GENERAL ASSEMBLY OF NORTH CAROLINA

SESSION 2017

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HOUSE BILL 788

Short Title: Amend Expunction Laws. (Public)

Sponsors: Representatives Harrison and Fisher (Primary Sponsors).

For a complete list of sponsors, refer to the North Carolina General Assembly web site.

Referred to: Judiciary I, if favorable, Rules, Calendar, and Operations of the House

April 13, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON SHALL NOT BE DENIED AN EXPUNCTION SOLELY BECAUSE THE PERSON HAS A CONVICTION FOR A MISDEMEANOR BOATING VIOLATION; TO PROVIDE THAT CERTAIN CONVICTIONS FOR DRIVING WHILE IMPAIRED AND BOATING WHILE IMPAIRED ARE NOT ELIGIBLE FOR EXPUNCTION; TO EXPAND THE AVAILABILITY OF CERTIFICATES OF RELIEF TO CERTAIN OFFENDERS AND FOR EXPUNCTIONS OF FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE; AND TO ALLOW FOR THE EXPUNCTION OF CERTAIN YOUTHFUL DRUG OFFENSES.

The General Assembly of North Carolina enacts:

SECTION 1. G.S. 15A-145 reads as rewritten:

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

(a) Whenever any person who has not previously been convicted of any felony, or misdemeanor other than a traffic ~~violation, violation~~ or a misdemeanor boating 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, violation~~ or a misdemeanor boating 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, violation~~ or a misdemeanor boating 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.



- 1 (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and
2 applicable to petitions for expunctions filed on or after that date.
- 3 (4a) An application on a form approved by the Administrative Office of the
4 Courts requesting and authorizing a name-based State and national criminal
5 record check by the Department of Public Safety using any information
6 required by the Administrative Office of the Courts to identify the individual
7 and a search of the confidential record of expunctions maintained by the
8 Administrative Office of the Courts. The application shall be forwarded to
9 the Department of Public Safety and to the Administrative Office of the
10 Courts, which shall conduct the searches and report their findings to the
11 court.
- 12 (5) An affidavit by the petitioner that no restitution orders or civil judgments
13 representing amounts ordered for restitution entered against him are
14 outstanding.

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

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

21 (a1) Nothing in this section shall be interpreted to allow the expunction of any offense
22 involving impaired driving as defined in G.S. 20-4.01(24a).

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

35"

36 **SECTION 2.** G.S. 15A-145.1 reads as rewritten:

37 **"§ 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of**
38 **conviction of certain gang offenses.**

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

- 50 (1) An affidavit by the petitioner that the petitioner has been of good behavior
51 (i) during the period of probation since the decision to defer further

1 proceedings on the offense in question pursuant to G.S. 14-50.29 or (ii)
2 during the two-year period since the date of conviction of the offense in
3 question, whichever applies, and has not been convicted of any felony or
4 misdemeanor other than a traffic violation or a misdemeanor boating
5 violation under the laws of the United States or the laws of this State or any
6 other state.

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

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

14 (4) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and
15 applicable to petitions for expunctions filed on or after that date.

16 (4a) An application on a form approved by the Administrative Office of the
17 Courts requesting and authorizing a name-based State and national criminal
18 record check by the Department of Public Safety using any information
19 required by the Administrative Office of the Courts to identify the individual
20 and a search of the confidential record of expunctions maintained by the
21 Administrative Office of the Courts. The application shall be forwarded to
22 the Department of Public Safety and to the Administrative Office of the
23 Courts, which shall conduct the searches and report their findings to the
24 court.

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

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

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

34 (b) If the court, after hearing, finds that (i) the petitioner was dismissed and the
35 proceedings against the petitioner discharged pursuant to G.S. 14-50.29 and that the person had
36 not yet attained 18 years of age at the time of the offense or (ii) the petitioner has remained of
37 good behavior and been free of conviction of any felony or misdemeanor other than a traffic
38 violation or a misdemeanor boating violation for two years from the date of conviction of the
39 offense in question, the petitioner has no outstanding restitution orders or civil judgments
40 representing amounts ordered for restitution entered against the petitioner, and the petitioner
41 had not attained the age of 18 years at the time of the offense in question, it shall order that
42 such person be restored, in the contemplation of the law, to the status occupied by the petitioner
43 before such arrest or indictment or information, and that the record be expunged from the
44 records of the court. No person as to whom such order has been entered shall be held thereafter
45 under any provision of any laws to be guilty of perjury or otherwise giving a false statement by
46 reason of the person's failure to recite or acknowledge such arrest, or indictment or information,
47 or trial, or response to any inquiry made of the person for any purpose. The court shall also
48 direct all law enforcement agencies, the Division of Adult Correction of the Department of
49 Public Safety, the Division of Motor Vehicles, and any other State or local government
50 agencies identified by the petitioner as bearing record of the same to expunge their records of

1 the petitioner's criminal charge and any conviction resulting from the charge. The clerk shall
2 notify State and local agencies of the court's order as provided in G.S. 15A-150.

3"

4 **SECTION 3.** G.S. 15A-145.2 reads as rewritten:

5 "**§ 15A-145.2. Expunction of records for first offenders not over 21 years of age at the**
6 **time of the offense of certain drug offenses.**

7 (a) Whenever a person is discharged, and the proceedings against the person dismissed,
8 pursuant to G.S. 90-96(a) or (a1), and the person was not over 21 years of age at the time of the
9 offense, the person may apply to the court for an order to expunge from all official records,
10 other than the confidential files retained under G.S. 15A-151, all recordation relating to the
11 person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge
12 pursuant to this section. The applicant shall attach to the application the following:

13 (1) An affidavit by the petitioner that he or she has been of good behavior
14 during the period of probation since the decision to defer further proceedings
15 on the offense in question and has not been convicted of any felony or
16 misdemeanor other than a traffic violation or a misdemeanor boating
17 violation under the laws of the United States or the laws of this State or any
18 other state;

19 (2) Verified affidavits by two persons who are not related to the petitioner or to
20 each other by blood or marriage, that they know the character and reputation
21 of the petitioner in the community in which he or she lives, and that the
22 petitioner's character and reputation are good;

23 (3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and
24 applicable to petitions for expunctions filed on or after that date.

25 (3a) An application on a form approved by the Administrative Office of the
26 Courts requesting and authorizing a name-based State and national criminal
27 record check by the Department of Public Safety using any information
28 required by the Administrative Office of the Courts to identify the individual
29 and a search of the confidential record of expunctions maintained by the
30 Administrative Office of the Courts. The application shall be forwarded to
31 the Department of Public Safety and to the Administrative Office of the
32 Courts, which shall conduct the searches and report their findings to the
33 court.

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 discharged and the proceedings
38 against him or her dismissed and that the person was not over 21 years of age at the time of the
39 offense, it 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 the person 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 the person's failures to recite or acknowledge such arrest, or indictment or information, or trial
44 in response to any inquiry made of him or her for any purpose.

45 The court shall also order that all records of the proceeding be expunged from the records
46 of the court and direct all law enforcement agencies, the Division of Adult Correction, the
47 Division of Motor Vehicles, and any other State and local government agencies identified by
48 the petitioner as bearing records of the same to expunge their records of the proceeding. The
49 clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

50 ...

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

20 The granting of an application filed under this subsection shall cause the issue of an order to
21 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
22 all recordation relating to the petitioner's arrest, indictment or information, trial, finding of
23 guilty, judgment of conviction, cancellation of the judgment, and expunction of records
24 pursuant to this subsection.

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

49 The court shall also order all law enforcement agencies, the Department of Correction, the
50 Division of Motor Vehicles, and any other State or local agencies identified by the petitioner as
51 bearing records of the conviction and records relating thereto to expunge their records of the

1 conviction. The clerk shall notify State and local agencies of the court's order as provided in
2 G.S. 15A-150.

3"

4 **SECTION 4.** G.S. 15A-145.3 reads as rewritten:

5 **"§ 15A-145.3. Expunction of records for first offenders not over 21 years of age at the**
6 **time of the offense of certain toxic vapors offenses.**

7 (a) Whenever a person is discharged and the proceedings against the person dismissed
8 under G.S. 90-113.14(a) or (a1), such person, if he or she was not over 21 years of age at the
9 time of the offense, may apply to the court for an order to expunge from all official records,
10 other than the confidential files retained under G.S. 15A-151, all recordation relating to the
11 person's arrest, indictment or information, trial, finding of guilty, and dismissal and discharge
12 pursuant to this section. The applicant shall attach to the application the following:

13 (1) An affidavit by the petitioner that the petitioner has been of good behavior
14 during the period of probation since the decision to defer further proceedings
15 on the misdemeanor in question and has not been convicted of any felony or
16 misdemeanor other than a traffic violation or a misdemeanor boating
17 violation under the laws of the United States or the laws of this State or any
18 other state;

19 (2) Verified affidavits by two persons who are not related to the petitioner or to
20 each other by blood or marriage, that they know the character and reputation
21 of the petitioner in the community in which the petitioner lives, and that his
22 or her character and reputation are good;

23 (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and
24 applicable to petitions for expunctions filed on or after that date.

25 (3a) An application on a form approved by the Administrative Office of the
26 Courts requesting and authorizing a name-based State and national criminal
27 record check by the Department of Public Safety using any information
28 required by the Administrative Office of the Courts to identify the individual
29 and a search of the confidential record of expunctions maintained by the
30 Administrative Office of the Courts. The application shall be forwarded to
31 the Department of Public Safety and to the Administrative Office of the
32 Courts, which shall conduct the searches and report their findings to the
33 court.

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 discharged and the proceedings
38 against the person dismissed and that he or she was not over 21 years of age at the time of the
39 offense, it 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 the person 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 the person's failures to recite or acknowledge such arrest, or indictment or information, or trial
44 in response to any inquiry made of him or her for any purpose.

45 The court shall also order that all records of the proceeding be expunged from the records
46 of the court and direct all law enforcement agencies bearing records of the same to expunge
47 their records of the proceeding. The clerk shall notify State and local agencies of the court's
48 order as provided in G.S. 15A-15.

49 ...

50 (c) Whenever any person who has not previously been convicted of an offense under
51 Article 5 or 5A of Chapter 90 of the General Statutes or under any statute of the United States

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

15 The granting of an application filed under this subsection shall cause the issue of an order to
16 expunge from all official records, other than the confidential files retained under G.S. 15A-151,
17 all recordation relating to the person's arrest, indictment or information, trial, finding of guilty,
18 judgment of conviction, cancellation of the judgment, and expunction of records pursuant to
19 this subsection.

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

41 The clerk shall notify State and local agencies of the court's order as provided in
42 G.S. 15A-150.

43"

44 **SECTION 5.** G.S. 15A-145.4 reads as rewritten:

45 **"§ 15A-145.4. Expunction of records for first offenders who are under 18 years of age at**
46 **the time of the commission of a nonviolent felony.**

47 ...

48 (c) Whenever any person who had not yet attained the age of 18 years at the time of the
49 commission of the offense and has not previously been convicted of any felony or
50 misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws
51 of the United States or the laws of this State or any other state pleads guilty to or is guilty of a

1 nonviolent felony, the person may file a petition in the court where the person was convicted
2 for expunction of the nonviolent felony from the person's criminal record. The petition shall not
3 be filed earlier than four years after the date of the conviction or when any active sentence,
4 period of probation, and post-release supervision has been served, whichever occurs later. The
5 person shall also perform at least 100 hours of community service, preferably related to the
6 conviction, before filing a petition for expunction under this section. The petition shall contain
7 the following:

- 8 (1) An affidavit by the petitioner that the petitioner has been of good moral
9 character since the date of conviction of the nonviolent felony in question
10 and has not been convicted of any other felony or any misdemeanor other
11 than a traffic violation or a misdemeanor boating violation under the laws of
12 the United States or the laws of this State or any other state.
- 13 (2) Verified affidavits of two persons who are not related to the petitioner or to
14 each other by blood or marriage, that they know the character and reputation
15 of the petitioner in the community in which the petitioner lives and that the
16 petitioner's character and reputation are good.
- 17 (3) A statement that the petition is a motion in the cause in the case wherein the
18 petitioner was convicted.
- 19 (4) An application on a form approved by the Administrative Office of the
20 Courts requesting and authorizing (i) a State and national criminal history
21 record check by the Department of Public Safety using any information
22 required by the Administrative Office of the Courts to identify the
23 individual; (ii) a search by the Department of Public Safety for any
24 outstanding warrants or pending criminal cases; and (iii) a search of the
25 confidential record of expunctions maintained by the Administrative Office
26 of the Courts. The application shall be forwarded to the Department of
27 Public Safety and to the Administrative Office of the Courts, which shall
28 conduct the searches and report their findings to the court.
- 29 (5) An affidavit by the petitioner that no restitution orders or civil judgments
30 representing amounts ordered for restitution entered against the petitioner
31 are outstanding.
- 32 (6) An affidavit by the petitioner that the petitioner has performed at least 100
33 hours of community service since the conviction for the nonviolent felony.
34 The affidavit shall include a list of the community services performed, a list
35 of the recipients of the services, and a detailed description of those services.
- 36 (7) An affidavit by the petitioner that the petitioner possesses a high school
37 diploma, a high school graduation equivalency certificate, or a General
38 Education Development degree.

39 The petition shall be served upon the district attorney of the court wherein the case was
40 tried resulting in conviction. The district attorney shall have 30 days thereafter in which to file
41 any objection thereto and shall be duly notified as to the date of the hearing of the petition. The
42 district attorney shall make his or her best efforts to contact the victim, if any, to notify the
43 victim of the request for expunction prior to the date of the hearing.

44 ...

45 (e) The court may order that the person be restored, in the contemplation of the law, to
46 the status the person occupied before the arrest or indictment or information if the court finds
47 all of the following after a hearing:

- 48 (1) The petitioner has remained of good moral character and has been free of
49 conviction of any felony or misdemeanor, other than a traffic or boating
50 violation, for four years from the date of conviction of the nonviolent felony

in question or any active sentence, period of probation, or post-release supervision has been served, whichever is later.

- (2) The petitioner has not previously been convicted of any felony or misdemeanor other than a traffic violation or a misdemeanor boating violation under the laws of the United States or the laws of this State or any other state.
- (3) The petitioner has no outstanding warrants or pending criminal cases.
- (4) The petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner.
- (5) The petitioner was less than 18 years old at the time of the commission of the offense in question.
- (6) The petitioner has performed at least 100 hours of community service since the time of the conviction and possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.
- (7) The search of the confidential records of expunctions conducted by the Administrative Office of the Courts shows that the petitioner has not been previously granted an expunction.

...."

SECTION 6. G.S. 15A-145.5 reads as rewritten:

"§ 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.

(a) For purposes of this section, the term "nonviolent misdemeanor" or "nonviolent felony" means any misdemeanor or felony except the following:

...

- (10) An offense under G.S. 20-138.1, 20-138.2, or 20-138.5, for driving while impaired, or under G.S. 75A-10(b1) for boating while impaired.

(b) Notwithstanding any other provision of law, if the person is convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court and none of the nonviolent felonies or nonviolent misdemeanors are alleged to have occurred after the person had already been served with criminal process for the commission of a nonviolent felony or nonviolent misdemeanor, then the multiple nonviolent felony or nonviolent misdemeanor convictions shall be treated as one nonviolent felony or nonviolent misdemeanor conviction under this section, and the expunction order issued under this section shall provide that the multiple nonviolent felony convictions or nonviolent misdemeanor convictions shall be expunged from the person's record in accordance with this section.

(c) A person may file a petition, in the court where the person was convicted, for expunction of a nonviolent misdemeanor or nonviolent felony conviction from the person's criminal record if the person has no other misdemeanor or felony convictions, other than a traffic ~~violation~~-violation or a misdemeanor boating violation. The petition shall not be filed earlier than 15 years after the date of the conviction or when any active sentence, period of probation, and post-release supervision has been served, 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 moral character since the date of conviction for the nonviolent misdemeanor or nonviolent felony and has not been convicted of any other felony or misdemeanor, other than a traffic ~~violation~~-violation or a misdemeanor boating violation, under the laws of the United States or the laws of this State or any other state.
- (2) Verified affidavits of two persons who are not related to the petitioner or to each other by blood or marriage, that they know the character and reputation

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

3 (3) A statement that the petition is a motion in the cause in the case wherein the
4 petitioner was convicted.

5 (4) An application on a form approved by the Administrative Office of the
6 Courts requesting and authorizing a name-based State and national criminal
7 history record check by the Department of Public Safety using any
8 information required by the Administrative Office of the Courts to identify
9 the individual, a search by the Department of Public Safety for any
10 outstanding warrants on pending criminal cases, and a search of the
11 confidential record of expunctions maintained by the Administrative Office
12 of the Courts. The application shall be forwarded to the Department of
13 Public Safety and to the Administrative Office of the Courts, which shall
14 conduct the searches and report their findings to the court.

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

18 Upon filing of the petition, the petition shall be served upon the district attorney of the court
19 wherein the case was tried resulting in conviction. The district attorney shall have 30 days
20 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
21 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
22 additional 30 days to file objection to the petition. The district attorney shall make his or her
23 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
24 to the date of the hearing.

25 The presiding judge is authorized to call upon a probation officer for any additional
26 investigation or verification of the petitioner's conduct since the conviction. The court shall
27 review any other information the court deems relevant, including, but not limited to, affidavits
28 or other testimony provided by law enforcement officers, district attorneys, and victims of
29 crimes committed by the petitioner.

30 If the court, after hearing, finds that the petitioner has not previously been granted an
31 expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or
32 15A-145.4; the petitioner has remained of good moral character; the petitioner has no
33 outstanding warrants or pending criminal cases; the petitioner has no other felony or
34 misdemeanor convictions other than a traffic ~~violation~~; violation or a misdemeanor boating
35 violation; the petitioner has no outstanding restitution orders or civil judgments representing
36 amounts ordered for restitution entered against the petitioner; and the petitioner was convicted
37 of an offense eligible for expunction under this section and was convicted of, and completed
38 any sentence received for, the nonviolent misdemeanor or nonviolent felony at least 15 years
39 prior to the filing of the petition, it may order that such person be restored, in the contemplation
40 of the law, to the status the person occupied before such arrest or indictment or information. If
41 the court denies the petition, the order shall include a finding as to the reason for the denial.

42"

43 **SECTION 7.** G.S. 15A-145.6(f) reads as rewritten:

44 "(f) The court shall order that the person be restored, in the contemplation of the law, to
45 the status the person occupied before the arrest or indictment or information if the court finds
46 all of the following after a hearing:

47 (1) The criteria set out in subsection (b) of this section are satisfied.

48 (2) The petitioner has remained of good moral character and has been free of
49 conviction of any felony or misdemeanor, other than a traffic ~~violation~~,
50 violation or a misdemeanor boating violation, since the date of conviction of
51 the prostitution offense in question.

- 1 (3) The petitioner has no outstanding warrants or pending criminal cases.
2 (4) The petitioner has no outstanding restitution orders or civil judgments
3 representing amounts ordered for restitution entered against the petitioner.
4 (5) The search of the confidential records of expunctions conducted by the
5 Administrative Office of the Courts shows that the petitioner has not been
6 previously granted an expunction, other than an expunction for a prostitution
7 offense."

8 **SECTION 8.** G.S. 14-50.30 reads as rewritten:

9 **"§ 14-50.30. Expunction of records.**

10 Any person who has not previously been convicted of any felony or misdemeanor other
11 than a traffic violation or a misdemeanor boating violation under the laws of the United States
12 or the laws of this State or any other state, may, if the offense was committed before the person
13 attained the age of 18 years, be eligible to apply for expunction of certain offenses under this
14 Article pursuant to G.S. 15A-145.1."

15 **SECTION 9.** G.S. 15A-173.2 reads as rewritten:

16 **"§ 15A-173.2. Certificate of Relief.**

17 (a) An individual who is convicted of ~~no more than two Class G, H, or I felonies or~~
18 ~~misdemeanors in one session of court, and who has no other convictions for a felony or~~
19 ~~misdemeanor other than a traffic violation, criminal offenses no higher than a Class G felony~~
20 may petition the court where the individual was convicted of the most serious offense for a
21 Certificate of Relief relieving collateral consequences as permitted by this Article. If the
22 individual has more than one conviction in the same class of offense as the most serious offense
23 and the convictions are in more than one court, the individual shall petition the court of the
24 most recent conviction. Except as otherwise provided in this subsection, the petition shall be
25 heard by the senior resident superior court judge if the convictions were in superior court, or
26 the chief district court judge if the convictions were in district court. The senior resident
27 superior court judge and chief district court judge in each district may delegate their authority
28 to hold hearings and issue, modify, or revoke Certificates of Relief to judges, clerks, or
29 magistrates in that district.

30 (b) Except as otherwise provided in G.S. 15A-173.3, the court may issue a Certificate
31 of Relief if, after reviewing the petition, the individual's criminal history, any information
32 provided by a victim under G.S. 15A-173.6 or the district attorney, and any other relevant
33 evidence, it finds the individual has established by a preponderance of the evidence all of the
34 following:

- 35 (1) ~~Twelve~~ If the individual has been convicted of five or fewer eligible
36 offenses, 12 months have passed since the individual has completed his or
37 her sentence. If the individual has been convicted of more than five eligible
38 offenses, 36 months have passed since the individual has completed his or
39 her sentence. For purposes of this subdivision, an individual has not
40 completed his or her sentence until the individual has served all of the active
41 time, if any, imposed for each offense and has also completed any period of
42 probation, post-release supervision, and parole related to the offense that is
43 required by State law or court order.
44 (2) The individual is engaged in, or seeking to engage in, a lawful occupation or
45 activity, including employment, training, education, or rehabilitative
46 programs, or the individual otherwise has a lawful source of support.
47 (3) The individual has complied with all requirements of the individual's
48 sentence, including any terms of probation, that may include substance abuse
49 treatment, anger management, and educational requirements.
50 (4) The individual is not in violation of the terms of any criminal sentence, or
51 that any failure to comply is justified, excused, involuntary, or insubstantial.

1 (5) A criminal charge is not pending against the individual.

2 (6) Granting the petition would not pose an unreasonable risk to the safety or
3 welfare of the public or any individual.

4 (c) The Certificate of Relief shall specify any restriction imposed and collateral
5 sanction or disqualification from which relief has not been granted under G.S. 15A-173.4(a).

6 (d) A Certificate of Relief relieves all collateral sanctions, except those listed in
7 G.S. 15A-173.3, those sanctions imposed by the North Carolina Constitution or federal law,
8 and any others specifically excluded in the certificate. A Certificate of Relief does not
9 automatically relieve a disqualification; however, an administrative agency, governmental
10 official, or court in a civil proceeding may consider a Certificate of Relief favorably in
11 determining whether a conviction should result in disqualification.

12 (e) A Certificate of Relief issued under this Article does not result in the expunction of
13 any criminal history record information, nor does it constitute a pardon.

14 (f) A Certificate of Relief may be revoked pursuant to G.S. 15A-173.4(b) if the
15 individual is subsequently convicted of a felony or misdemeanor other than a traffic violation
16 or is found to have made any material misrepresentation in his or her petition.

17 (g) The denial of a petition for a Certificate of Relief shall state the reasons for the
18 denial, and the petitioner may file a subsequent petition 12 months from the denial and shall
19 demonstrate that the petitioner has remedied the defects in the previous petition and has
20 complied with any conditions for reapplication set by the court pursuant to G.S. 15A-173.4(a)
21 in order to have the petition granted.

22 (h) A person who files a petition for a certificate of relief under this section shall pay a
23 fee of fifty dollars (\$50.00) to the clerk of superior court at the time the petition is filed. Fees
24 collected under this subsection shall be deposited in the General Fund. This subsection shall not
25 apply to a petition filed by an indigent."

26 **SECTION 10.** G.S. 15A-146 reads as rewritten:

27 **"§ 15A-146. Expunction of records when charges are dismissed or there are findings of**
28 **not guilty.**

29 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
30 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
31 dismissed, or a finding of not guilty or not responsible is entered, that person may apply to the
32 court of the county where the charge was brought for an order to expunge from all official
33 records any entries relating to ~~his~~ the person's apprehension or trial. The court shall hold a
34 hearing on the application and, upon finding that ~~the person had not previously received an~~
35 ~~expungement under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4,~~
36 ~~or 15A-145.5, the charge was dismissed or a finding of not guilty or not responsible was~~
37 ~~entered~~ and that the person had not previously been convicted of any felony under the laws of
38 the United States, this State, or any other state, the court shall order the expunction. No person
39 as to whom such an order has been entered shall be held thereafter under any provision of any
40 law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to
41 any inquiry made for any purpose, by reason of ~~his~~ the person's failure to recite or acknowledge
42 any expunged entries concerning apprehension or trial.

43 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
44 offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,
45 then a person may apply to have each of those charges expunged if the offenses occurred within
46 the same 12-month period of time or if the charges are dismissed or findings are made at the
47 same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court"
48 shall mean one week for superior court and one day for district court. There is no requirement
49 that the multiple offenses arise out of the same transaction or occurrence or that the multiple
50 offenses were consolidated for judgment. The court shall hold a hearing on the application. If
51 the court finds (i) ~~that the person had not previously received an expungement under this~~

1 subsection, or that any previous expungement received under this subsection occurred prior to
2 October 1, 2005 and was for an offense that occurred within the same 12-month period of time,
3 or was dismissed or findings made at the same term of court, as the offenses that are the subject
4 of the current application, (ii) that the person had not previously received an expungement
5 under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii)
6 that all of the charges were dismissed or that findings of not guilty or not responsible were
7 entered and finds that the person had not previously been convicted of any felony under the
8 laws of the United States, this State, or any other state, the court shall order the expunction. No
9 person as to whom such an order has been entered shall be held thereafter under any provision
10 of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or
11 response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge
12 any expunged entries concerning apprehension or trial.

13"

14 **SECTION 11.** Article 5 of Chapter 15A of the General Statutes is amended by
15 adding a new section to read:

16 **"§ 15A-145.7. Expunction of certain youth drug offenses.**

17 (a) The following definitions apply to this section:

18 (1) Drug free. – Free from drug dependency and any unlawful use of controlled
19 substances.

20 (2) Youthful drug offense. – A conviction of any violation of G.S. 90-95(a)(3)
21 or G.S. 90-113.22 where the defendant had not yet attained the age of 25
22 years at the time of the commission of the offense.

23 (b) Notwithstanding any other provision of law, if the person is convicted of more than
24 one youthful drug offense in the same session of court, then the multiple youthful drug offense
25 convictions shall be treated as one youthful drug offense conviction under this section, and the
26 expunction order issued under this section shall provide that the multiple youthful drug offense
27 convictions shall be expunged from the person's record in accordance with this section.

28 (c) A person may file a petition in the court where the person was convicted for
29 expunction of up to two youthful drug offense convictions from the person's criminal record if
30 the person has no misdemeanor or felony convictions, other than a traffic or a misdemeanor
31 boating violation, for a period of at least 10 years prior to the date that the petition is filed;
32 convicted of a youthful drug offense that is eligible pursuant to subsection (a) of this section;
33 and provides proof pursuant to subsection (d) of this section that the person is drug free and has
34 been drug free for a period of at least one year prior to the date that the petition is filed. The
35 petition shall not be filed earlier than (i) 10 years after the date of the conviction or (ii) when
36 any active sentence, period of probation, and post-release supervision has been served,
37 whichever occurs later. If the petition is to expunge two youthful drug offense convictions, the
38 petition shall not be filed earlier than 10 years after the date of the last conviction or when any
39 active sentence, period of probation, and post-release supervision has been served for the last
40 conviction, whichever occurs later.

41 (d) To establish that a person is drug free and has been drug free for a period of at least
42 one year prior to the date that the petition is filed, a person shall provide proof that the person
43 has been tested for drugs every 30 days for a period of at least one year immediately preceding
44 the date that the petition is filed and tested drug free at each testing and shall also provide a
45 drug evaluation for review by the court. The Administrative Office of the Courts, in
46 cooperation with the Department of Health and Human Services, shall determine what type of
47 documentation must be provided to the court regarding the required drug testing and evaluation
48 and the format in which the documentation shall be presented to the court for review.

49 (e) The petition shall contain, but not be limited to, the following:

50 (1) An affidavit by the petitioner that the petitioner is of good moral character
51 and has not been convicted of any felony or misdemeanor, other than a

1 traffic or boating violation, under the laws of the United States or the laws of
2 this State or any other state for a period of at least 10 years prior to the date
3 that the petition is filed.

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

8 (3) A statement that the petition is a motion in the cause in the case wherein the
9 petitioner was convicted.

10 (4) An application on a form approved by the Administrative Office of the
11 Courts requesting and authorizing a name-based State and national criminal
12 history record check by the Department of Public Safety using any
13 information required by the Administrative Office of the Courts to identify
14 the individual, a search by the Department of Public Safety for any
15 outstanding warrants on pending criminal cases, and a search of the
16 confidential record of expunctions maintained by the Administrative Office
17 of the Courts. The application shall be forwarded to the Department of
18 Public Safety and to the Administrative Office of the Courts, which shall
19 conduct the searches and report their findings to the court.

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

23 (6) Documentation in a format approved by the Administrative Office of the
24 Courts establishing that the petitioner is drug free and has been drug free for
25 a period of at least one year prior to the date of the filing of the petition.

26 Upon filing of the petition, the petition shall be served upon the district attorney of the court
27 wherein the case resulting in conviction was heard. The district attorney shall have 30 days
28 thereafter in which to file any objection thereto and shall be duly notified as to the date of the
29 hearing of the petition. Upon good cause shown, the court may grant the district attorney an
30 additional 30 days to file objection to the petition. The district attorney shall make his or her
31 best efforts to contact the victim, if any, to notify the victim of the request for expunction prior
32 to the date of the hearing.

33 The presiding judge may call upon a probation officer for any additional investigation or
34 verification of the petitioner's conduct since the conviction. The court shall review any other
35 information the court deems relevant, including, but not limited to, affidavits or other testimony
36 provided by law enforcement officers, district attorneys, and victims of crimes committed by
37 the petitioner.

38 (f) If the court after hearing finds that the petitioner has not previously been granted an
39 expunction, the petitioner is drug free; the petitioner is of good moral character; the petitioner
40 has no outstanding warrants or pending criminal cases; the petitioner has no felony or
41 misdemeanor convictions other than a traffic violation, for a period of 10 years prior to the
42 filing of the petition; the petitioner has no outstanding restitution orders or civil judgments
43 representing amounts ordered for restitution entered against the petitioner; the petition for
44 expunction of a youthful drug offense conviction was filed at least 10 years after the date of
45 conviction or, if the petition for expunction is for two youthful drug offense convictions, the
46 petition was filed at least 10 years after the date of the later conviction; and the petitioner has
47 completed any sentence received for the conviction, it may order that such person be restored,
48 in the contemplation of the law, to the status the person occupied before such arrest or
49 indictment or information. If the court denies the petition, the order shall include a finding as to
50 the reason for the denial.

1 (g) No person as to whom an order has been entered pursuant to this section shall be
2 held thereafter under any provision of any law to be guilty of perjury or otherwise giving a
3 false statement by reason of that person's failure to recite or acknowledge the arrest, indictment,
4 information, trial, or conviction. Persons pursuing certification under the provisions of Chapter
5 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the
6 certifying Commission, regardless of whether or not the convictions were expunged pursuant to
7 the provisions of this section. Persons required by State law to obtain a criminal history record
8 check on a prospective employee shall not be deemed to have knowledge of any convictions
9 expunged under this section.

10 (h) The court shall also order that the conviction be expunged from the records of the
11 court and direct all law enforcement agencies bearing record of the same to expunge their
12 records of the conviction. The clerk shall notify State and local agencies of the court's order, as
13 provided in G.S. 15A-150.

14 (i) Any other applicable State or local government agency shall expunge from its
15 records entries made as a result of the conviction ordered expunged under this section upon
16 receipt from the petitioner of an order entered pursuant to this section. The agency shall also
17 vacate and reconsider any administrative actions taken against a person whose record is
18 expunged under this section as a result of the charges or convictions expunged.

19 (j) A person who files a petition for expunction of a criminal record under this section
20 must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the
21 time the petition is filed. Fees collected under this subsection are payable to the Administrative
22 Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars
23 and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the
24 costs of criminal record checks performed in connection with processing petitions for
25 expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each
26 fee shall be retained by the Administrative Office of the Courts and used to pay the costs of
27 processing petitions for expunctions under this section. This subsection does not apply to
28 petitions filed by an indigent."

29 **SECTION 12.** This act becomes effective December 1, 2017, and applies to
30 petitions for expunction and certificates of relief filed on or after that date.