

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

SESSION LAW 2017-195
SENATE BILL 445

AN ACT TO STANDARDIZE THE FILING PROCEDURES FOR EXPUNGEMENTS, TO AUTHORIZE PROSECUTORS ACCESS TO CERTAIN RECORDS OF EXPUNGEMENT, TO ALLOW CERTAIN EXPUNGED CRIMINAL ACTS TO BE CONSIDERED IN CALCULATING PRIOR RECORD LEVELS DURING SENTENCING FOR SUBSEQUENT OFFENSES, AND TO MAKE OTHER MODIFICATIONS TO THE EXPUNGEMENT PROCESS.

The General Assembly of North Carolina enacts:

SECTION 1. Article 5 of Chapter 15A of the General Statutes reads as rewritten:
"Article 5.

"Expunction of Records.

"§ 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, 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 of the county 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- (4) Repealed by Session Laws 2010-174, s. 2, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (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 Public Safety 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~~ filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety 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.

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

(b) If the court, after hearing, finds that the petitioner had remained of good behavior and been free of conviction of any felony or misdemeanor, other than a traffic violation, for two years from the date of conviction of the misdemeanor in question, the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against him, and (i) petitioner was not 18 years old at the time of the offense in question, or (ii) petitioner was not 21 years old at the time of the offense of possession of alcohol pursuant to G.S. 18B-302(b)(1), it shall order that such person be restored, in the contemplation of the law, to the status he occupied before such arrest or indictment or information.

(b1) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(c) The court shall also order that the misdemeanor conviction, or a civil revocation of a drivers license as the result of a criminal charge, be expunged from the records of the court. The court shall direct all law-enforcement agencies, the Division of Adult Correction of the Department of Public Safety, 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 conviction or a civil revocation of a drivers license as the result of a criminal charge. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation.

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

(d1) Repealed by Session Laws 2012-191, s. 3, effective December 1, 2012.

(e) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the

costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 of the county 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) Repealed by Session Laws 2010-174, s. 4, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (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 Public Safety 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 filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety 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 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, and that the record be expunged from the records of the court.

(b1) 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(b2) The court shall also direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, 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 resulting from the charge. The clerk shall 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.

(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 one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 of the county where charged for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to 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~~ petition the following:

- (1) An affidavit by the 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 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 the petitioner's character and reputation are good;
 - (3) Repealed by Session Laws 2010-174, s. 5, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
 - (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 Public Safety 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 filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety 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 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 the person occupied before such arrest or indictment or information.

(a1) 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 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(a2) The court shall also order that all records of the proceeding be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult 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 proceeding. The clerk shall 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 I through VI of Article 5 of Chapter 90 of the General Statutes or a felony under G.S. 90-95(a)(3), upon dismissal by the State of the charges against 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 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 (i) any felony offense under any state or federal laws; (ii) any offense under Chapter 90 of the General Statutes; or (iii) an offense under any statute of the United States or any state relating to controlled substances included in any schedule 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 5 of Chapter 90 of the General Statutes by possessing a controlled substance included within Schedules I through VI of Chapter 90, or by possessing drug paraphernalia as prohibited by G.S. 90-113.22 or pleads guilty to or has been found guilty of a felony under G.S. 90-95(a)(3), 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 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.~~ except as provided in G.S. 15A-151.5. 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 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 I 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), that the petitioner has no disqualifying previous convictions as set forth in this subsection, that the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and 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 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 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 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, the Department of ~~Correction,~~ Public Safety, 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 notify State and local agencies of the court's order as provided in G.S. 15A-150.

(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 one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

"§ 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 of the county where charged for an order to expunge from all official records, other than the confidential files retained under G.S. 15A-151, all recordation relating to 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~~ petition the following:

- (1) An affidavit by the 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 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 his or her character and reputation are good;
- (3) Repealed by Session Laws 2010-174, s. 6, effective October 1, 2010, and applicable to petitions for expunctions filed on or after that date.
- (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 Public Safety 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~~ filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety 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 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 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

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 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 proceeding. The clerk shall 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 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 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.

(b1) 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 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. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(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 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.~~ except as provided in G.S. 15A-151.5. 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 files retained under G.S. 15A-151, all recordation relating to 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 the petitioner was not over 21 years of age at the time of the offense, that the petitioner has been of good behavior since his or her conviction, that the petitioner has successfully completed a drug education program approved for this purpose by the Department of Health and Human Services, and 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 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 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 clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150.

(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 one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

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

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

- (1) A Class A through G felony.
- (2) A felony that includes assault as an essential element of the offense.
- (3) A felony that is an offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Repealed by Session Laws 2012-191, s. 2, effective December 1, 2012.
- (5) Any felony offense under the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (6) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine; except that if a prayer for judgment continued has been entered for an offense classified as either a Class G, H, or I felony, the prayer for judgment continued shall be subject to expunction under the procedures in this section.
- (7) A felony offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any felony offense for which punishment was determined pursuant to G.S. 14-3(c).
- (8) A felony offense under G.S. 14-401.16.
- (9) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
- (10) Any felony offense involving impaired driving as defined in G.S. 20-4.01(24a).

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

(c) Whenever any person who had not yet attained the age of 18 years at the time of the commission of the offense and has not previously been convicted of any felony or misdemeanor other than a traffic violation under the laws of the United States or the laws of this State or any other state pleads guilty to or is guilty of a nonviolent felony, the person may file a petition in the court of the county where the person was convicted for expunction of the nonviolent felony from the person's criminal record. The petition shall not be filed earlier than four 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 person shall also perform at least 100 hours of community service, preferably related to the conviction, before filing a petition for expunction under this section. The petition shall contain the following:

- (1) An affidavit by the petitioner that the petitioner has been of good moral character since the date of conviction of the nonviolent felony in question and has not been convicted of any other felony or any 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) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be ~~forwarded~~ filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety 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.
- (6) An affidavit by the petitioner that the petitioner has performed at least 100 hours of community service since the conviction for the nonviolent felony. The affidavit shall include a list of the community services performed, a list of the recipients of the services, and a detailed description of those services.
- (7) An affidavit by the petitioner that the petitioner possesses a high school diploma, a high school graduation equivalency certificate, or a General Education Development degree.

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 30 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 district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

(d) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a nonviolent felony under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the four-year period since the date of conviction of the nonviolent felony in question.
- (2) Review the petitioner's juvenile record, ensuring that the petitioner's juvenile records remain separate from adult records and files and are withheld from public inspection as provided under Article 30 of Chapter 7B of the General Statutes.
- (3) Review the amount of restitution made by the petitioner to the victim of the nonviolent felony to be expunged and give consideration to whether or not restitution was paid in full.
- (4) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers, district attorneys, and victims of nonviolent felonies committed by the petitioner.

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

- (1) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic 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 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.

(f) No person as to whom an order has been entered pursuant to subsection (e) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all felony convictions to the certifying Commission regardless of whether or not the felony

convictions were expunged pursuant to the provisions of this section. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(f1) Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

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

(h) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(i) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the felony which is to be expunged under this section.

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

"§ 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:

- (1) A Class A through G felony or a Class A1 misdemeanor.
- (2) An offense that includes assault as an essential element of the offense.
- (3) An offense requiring registration pursuant to Article 27A of Chapter 14 of the General Statutes, whether or not the person is currently required to register.
- (4) Any of the following sex-related or stalking offenses: G.S. 14-27.25(b), 14-27.30(b), 14-190.7, 14-190.8, 14-190.9, 14-202, 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, 14-321.1.
- (5) Any felony offense in Chapter 90 of the General Statutes where the offense involves methamphetamines, heroin, or possession with intent to sell or deliver or sell and deliver cocaine.
- (6) An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14, or any offense for which punishment was determined pursuant to G.S. 14-3(c).
- (7) An offense under G.S. 14-401.16.

- (7a) An offense under G.S. 14-54(a), 14-54(a1), or 14-56.
- (8) Any felony offense in which a commercial motor vehicle was used in the commission of the offense.
- (8a) An offense involving impaired driving as defined in G.S. 20-4.01(24a).
- (9) Any offense that is an attempt to commit an offense described in subdivisions (1) through (8a) of this subsection.

(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 of the county 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. The petition shall not be filed earlier than ~~15-10~~ years after the date of the conviction for a nonviolent felony or five years for a nonviolent misdemeanor 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, 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) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing a name-based State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual, a search by the Department of Public Safety for any outstanding warrants on pending criminal cases, and a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be ~~forwarded~~ filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety 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.

Upon filing of the petition, 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 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the

hearing of the petition. Upon good cause shown, the court may grant the district attorney an additional 30 days to file objection to the petition. The district attorney shall make his or her best efforts to contact the victim, if any, to notify the victim of the request for expunction prior to the date of the hearing.

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

If the court, after hearing, finds that the petitioner has not previously been granted an expunction under this section, G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, or 15A-145.4; the petitioner has remained of good moral character; the petitioner has no outstanding warrants or pending criminal cases; the petitioner has no other felony or misdemeanor convictions other than a traffic violation; the petitioner has no outstanding restitution orders or civil judgments representing amounts ordered for restitution entered against the petitioner; and the petitioner was convicted of an offense eligible for expunction under this section and was convicted of, and completed any sentence received for, ~~the nonviolent misdemeanor or a nonviolent felony at least 15-10 years prior to the filing of the petition,~~ petition or a nonviolent misdemeanor at least five years prior to the filing of the petition, it may order that such person be restored, in the contemplation of the law, to the status the person occupied before such arrest or indictment or ~~information.~~ information, except as provided in G.S. 15A-151.5. If the court denies the petition, the order shall include a finding as to the reason for the denial.

(d) No person as to whom an order has been entered pursuant to subsection (c) of this section shall be held thereafter under any provision of any law to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(d1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all convictions to the certifying Commission, regardless of whether or not the convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

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

(f) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section upon receipt from the petitioner of an order entered pursuant to this section. The agency shall also vacate any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. A person whose administrative action has been vacated by an occupational licensing board pursuant to an expunction under this section may then reapply for licensure and must satisfy the board's then current education and preliminary licensing requirements in order to obtain licensure. This subsection shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(g) A person who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) 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.

"§ 15A-145.6. Expunctions for certain defendants convicted of prostitution.

(a) The following definitions apply in this section:

- (1) Prostitution offense. – A conviction for (i) violation of G.S. 14-204 or (ii) engaging in prostitution in violation of G.S. 14-204(7) for an offense that occurred prior to October 1, 2013.
- (2) Violent felony or violent misdemeanor. – A Class A through G felony or a Class A1 misdemeanor that includes assault as an essential element of the offense.

(b) A person who has been convicted of a prostitution offense may file a petition in the court of the county where the person was convicted for expunction of the prostitution offense from the person's criminal record provided that all the following criteria are met:

- (1) The person has not previously been convicted of any violent felony or violent misdemeanor under the laws of the United States or the laws of this State or any other state.
- (2) The person satisfies any one of the following criteria:
 - a. The person's participation in the prostitution offense was a result of having been a trafficking victim under G.S. 14-43.11 (human trafficking) or G.S. 14-43.13 (sexual servitude) or a victim of a severe form of trafficking under the federal Trafficking Victims Protection Act (22 U.S.C. § 7102(13)).
 - b. The person has no prior convictions for a prostitution offense and at least three years have passed since the date of conviction or the completion of any active sentence, period of probation, and post-release supervision, whichever occurs later.
 - c. The person received a conditional discharge pursuant to G.S. 14-204(b).

(c) The petition shall contain all of the following:

- (1) An affidavit by the petitioner that the petitioner (i) has no prior conviction of a violent felony or violent misdemeanor, (ii) has been of good moral character since the date of conviction of the prostitution offense in question, and (iii) has not been convicted of any felony or misdemeanor under the laws of the United States or the laws of this State or any other state since the date of the conviction of the prostitution offense in question.
- (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) A statement that the petition is a motion in the cause in the case wherein the petitioner was convicted.
- (4) An application on a form approved by the Administrative Office of the Courts requesting and authorizing (i) a State and national criminal history record check by the Department of Public Safety using any information required by the Administrative Office of the Courts to identify the individual; (ii) a search by the Department of Public Safety for any outstanding warrants or pending criminal cases; and (iii) a search of the confidential record of expunctions maintained by the Administrative Office of the Courts. The application shall be ~~forwarded~~ filed with the clerk of superior court. The clerk of superior court shall forward the application to the Department of Public Safety 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.

(d) 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 30 days thereafter in which to file any objection thereto and shall be duly notified as to the date of the hearing of the petition.

(e) The court in which the petition was filed shall take the following steps and shall consider the following issues in rendering a decision upon a petition for expunction of records of a prostitution offense under this section:

- (1) Call upon a probation officer for additional investigation or verification of the petitioner's conduct during the period since the date of conviction of the prostitution offense in question.
- (2) Review any other information the court deems relevant, including, but not limited to, affidavits or other testimony provided by law enforcement officers and district attorneys.

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

- (1) The criteria set out in subsection (b) of this section are satisfied.
- (2) The petitioner has remained of good moral character and has been free of conviction of any felony or misdemeanor, other than a traffic violation, since the date of conviction of the prostitution offense in question.
- (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 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, other than an expunction for a prostitution offense.

(g) No person as to whom an order has been entered pursuant to subsection (f) of this section shall be held thereafter under any provision of any laws to be guilty of perjury or otherwise giving a false statement by reason of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction. This subsection shall not apply to a sentencing hearing when the person has been convicted of a subsequent criminal offense.

(g1) Persons pursuing certification under the provisions of Chapter 17C or 17E of the General Statutes, however, shall disclose any and all prostitution convictions to the certifying Commission regardless of whether or not the prostitution convictions were expunged pursuant to the provisions of this section.

Persons required by State law to obtain a criminal history record check on a prospective employee shall not be deemed to have knowledge of any convictions expunged under this section.

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

(i) Any other applicable State or local government agency shall expunge from its records entries made as a result of the conviction ordered expunged under this section. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. This subsection

shall not apply to the Department of Justice for DNA records and samples stored in the State DNA Database and the State DNA Databank.

(j) Any person eligible for expunction of a criminal record under this section shall be notified about the provisions of this section by the probation officer assigned to that person. If no probation officer is assigned, notification of the provisions of this section shall be provided by the court at the time of the conviction of the prostitution offense which is to be expunged under this section.

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

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

(a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple offenses and ~~all the charges are dismissed, or findings of not guilty or not responsible are made,~~ then a person may apply-petition to have each of ~~those the dismissed~~ charges expunged ~~if the offenses occurred within the same 12-month period of time or if the charges are dismissed or findings are made at the same term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall mean one week for superior court and one day for district court. There is no requirement that the multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were consolidated for judgment.~~ expunged. The court shall hold a hearing on the ~~application-petition~~. If the court finds (i) ~~that the person had not previously received an expungement under this subsection, or that any previous expungement received under this subsection occurred prior to October 1, 2005 and was for an offense that occurred within the same 12-month period of time, or was dismissed or findings made at the same term of court, as the offenses that are the subject of the current application,~~ (ii) ~~that the person had not previously received an expungement under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and~~ (iii) ~~that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state,~~ the court shall order the expunction.

(a2) If any person is charged with a crime, either a misdemeanor or a felony, or an infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not responsible is entered, that person may petition the court of the county where the charge was brought for an order to expunge from all official records any entries relating to apprehension or trial of that crime. The court shall hold a hearing on the petition and upon finding that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction. No person as to whom such an order has been entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of failure to recite or acknowledge any expunged entries concerning that crime. If a person is charged with multiple offenses and findings of not guilty or not responsible are made on charges, then a person may petition to have each of the charges

disposed by a finding of not guilty or not responsible expunged. The court shall hold a hearing on the petition. If the court finds that the person had not previously been convicted of any felony under the laws of the United States, this State, or any other state, the court shall order the expunction.

(a3) No person as to whom such an order has been entered under this section shall be held thereafter under any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge any expunged entries concerning apprehension or trial.

(b) The court may also order that the said entries, including civil revocations of drivers licenses as a result of the underlying charge, shall be expunged from the records of the court, and direct all law-enforcement agencies, the Division of Adult Correction of the Department of Public Safety, 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 entries, including civil revocations of drivers licenses as a result of the underlying charge being expunged. This subsection does not apply to civil or criminal charges based upon the civil revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be expunged prior to a final disposition of any pending civil or criminal charge based upon the civil revocation. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(b1) Any person entitled to expungement under this section may also apply to the court for an order expunging DNA records when the person's case has been dismissed by the trial court and the person's DNA record or profile has been included in the State DNA Database and the person's DNA sample is stored in the State DNA Databank. A copy of the application for expungement of the DNA record or DNA sample shall be served on the district attorney for the judicial district in which the felony charges were brought not less than 20 days prior to the date of the hearing on the application. If the application for expungement is granted, a certified copy of the trial court's order dismissing the charges shall be attached to an order of expungement. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (b2) of this section.

(b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this section, the North Carolina State Crime Laboratory shall purge the DNA record and all other identifying information from the State DNA Database and the DNA sample stored in the State DNA Databank covered by the order, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement.

(c) The Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. G.S. 15A-150 and forward the petition to the Administrative Office of the Courts.

(d) A person charged with a crime that is dismissed pursuant to compliance with a deferred prosecution agreement or the terms of a conditional discharge and who files a petition for expunction of a criminal record under this section must pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected under this subsection are payable to the Administrative Office of the Courts. The clerk of

superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee to the North Carolina Department of Public Safety for the costs of criminal record checks performed in connection with processing petitions for expunctions under this section. The remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the Courts and used to pay the costs of processing petitions for expunctions under this section. This subsection does not apply to petitions filed by an indigent.

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

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

(a1) If any person is named in a charge for an infraction or a crime, either a misdemeanor or a felony, as a result of another person using the identifying information of the named person or mistaken identity, and the charge against the named person is dismissed, the prosecutor or other judicial officer who ordered the dismissal shall provide notice to the court of the dismissal, and the court shall order the expunction of all official records containing any entries relating to the person's apprehension, charge, or trial.

(a2) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

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

(c) The court shall also order that the said entries shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner, or the person eligible for automatic expungement under subsection (a1) of this section, as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

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

(e) The Division of Adult Correction of the Department of Public Safety and any other applicable State or local government agency shall expunge its records as provided in

G.S. 15A-150. The agency shall also reverse any administrative actions taken against a person whose record is expunged under this section as a result of the charges or convictions expunged. Notwithstanding any other provision of law, the normal fee for any reinstatement of a license or privilege resulting under this section shall be waived.

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

(g) For purposes of this section, the term "mistaken identity" means the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime.

"§ 15A-148. Expunction of DNA records when charges are dismissed on appeal or pardon of innocence is granted.

(a) Upon a motion by the defendant following the issuance of a final order by an appellate court reversing and dismissing a conviction of an offense for which a DNA analysis was done in accordance with Article 13 of Chapter 15A of the General Statutes, or upon receipt of a pardon of innocence with respect to any such offense, the court shall issue an order of expungement of the DNA record and samples in accordance with subsection (b) of this section. The order of expungement shall include the name and address of the defendant and the defendant's attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting expungement as required by subsection (b) of this section.

(b) When an order of expungement has been issued pursuant to subsection (a) of this section, the order of expungement, together with a certified copy of the final appellate court order reversing and dismissing the conviction or a certified copy of the instrument granting the pardon of innocence, shall be provided to the North Carolina State Crime Laboratory by the clerk of court. Upon receiving an order of expungement for an individual whose DNA record or profile has been included in the State DNA Database and whose DNA sample is stored in the State DNA Databank, the DNA profile shall be expunged and the DNA sample destroyed by the North Carolina State Crime Laboratory, except that the order shall not apply to other offenses committed by the individual that qualify for inclusion in the State DNA Database and the State DNA Databank. A letter documenting expungement of the DNA record and destruction of the DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the defendant's attorney at the address specified by the court in the order of expungement. The North Carolina State Crime Laboratory shall adopt procedures to comply with this subsection.

(c) Any petition for expungement under this section shall be on a form approved by the Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of expungement, the clerk shall forward the petition to the Administrative Office of the Courts.

"§ 15A-149. Expunction of records when pardon of innocence is granted.

(a) If any person is convicted of a crime and receives a pardon of innocence, the person may ~~apply by petition or written motion to~~ the court in which the person was convicted on a form approved by the Administrative Office of the Courts supplied by the clerk of court for an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. Upon receipt of the ~~petition or written motion, petition,~~ the clerk of court shall verify that an attested copy of the warrant and return granting a pardon of innocence has been filed with the court in accordance with G.S. 147-25. Upon verification by the clerk that the warrant and return have been filed, the court shall issue an order of expunction.

(b) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in ~~G.S. 15A-150~~. G.S. 15A-150 and shall forward the petition to the Administrative Office of the Courts. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

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

"§ 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 petitions granted under this Article, any orders of expunction, and the names of the following:

- (1) Persons granted an expunction under this Article.
- (2), (3) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (4) Repealed by Session Laws 2010-174, s. 7, effective October 1, 2010.
- (5) Repealed by Session Laws 2015-40, s. 3, effective December 1, 2015, and applicable to conditional discharges granted on or after that date.
- (6) Persons granted a dismissal upon completion of a conditional discharge under G.S. 14-50.29, 14-204, 14-313(f), 15A-1341(a4), 90-96, or 90-113.14.

(b) Notification to Other State and Local Agencies. – Unless otherwise instructed by the Administrative Office of the Courts pursuant to an agreement entered into under subsection (e) of this section for the electronic or facsimile transmission of information, 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-subsection and the person.~~ An agency receiving an order under this subsection shall expunge-purge from its records all entries made as a result of the charge or conviction ordered expunged, except as provided in G.S. 15A-151. The list of agencies is as follows:

- (1) The sheriff, chief of police, or other arresting agency.
- (2) When applicable, the Division of Motor Vehicles.
- (3) Any State or local agency identified by the petition as bearing record of the offense that has been expunged.
- (4) The Department of Public Safety. Safety, Combined Records Section.
- (5) The State Bureau of Investigation.

(c) Notification to FBI. – ~~The Department of Public Safety~~ State Bureau of Investigation shall forward the order received under this section 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.

(e) The Director of the Administrative Office of the Courts may enter into an agreement with any of the State agencies listed in subsection (b) of this section for electronic or facsimile transmission of any information that must be provided under this section.

"§ 15A-151. Confidential agency files; exceptions to expunction.

(a) The Administrative Office of the Courts shall maintain a confidential file for expungements containing the petitions granted under this Article and 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~~ Upon request of 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~~ Upon request of a person requesting confirmation of the person's own discharge or expunction, as provided in G.S. 15A-152. ~~expunction.~~
- (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.
- (4) ~~If~~ Upon request of State or local law enforcement, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6, to State and local law enforcement agencies 15A-145.6 for employment purposes only.
- (5) ~~If~~ Upon the request of the North Carolina Criminal Justice Education and Training Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6, to the North Carolina Criminal Justice Education and Training Standards Commission 15A-145.6 for certification purposes only.
- (6) ~~If~~ Upon request of the North Carolina Sheriff's Standards Commission, if the criminal record was expunged pursuant to G.S. 15A-145.4, 15A-145.5, or 15A-145.6, to the North Carolina Sheriffs' Education and Training Standards Commission 15A-145.6 for certification purposes only.
- (7) To the district attorney in accordance with G.S. 15A-151.5.

(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.

"§ 15A-151.5. Prosecutor access to expunged files.

(a) Notwithstanding any other provision of this Article, the Administrative Office of the Courts shall make all confidential files maintained under G.S. 15A-151 electronically available to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under any of the following:

- (1) G.S. 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.
- (2) G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.

- (3) G.S. 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.
- (4) G.S. 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.
- (5) G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.
- (6) G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.
- (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.
- (8) G.S. 15A-146(a). Expunction of records when charges are dismissed.
- (9) G.S. 15A-146(a1). Expunction of records when charges are dismissed.

(b) For any expungement granted on or after July 1, 2018, the expunged criminal records under subdivisions (1) through (7) of subsection (a) of this section may be used to calculate prior record level if the named person is convicted of a subsequent criminal offense.

(c) For any expungement granted on or after July 1, 2018, the information maintained by the Administrative Office of the Courts, and made available under subsection (a) of this section, shall be prima facie evidence of the expunged conviction for the purposes of calculating prior record level of the named person and shall be admissible into evidence at a subsequent criminal sentencing hearing.

...."

SECTION 2. This act becomes effective December 1, 2017, and applies to petitions filed on or after that date.

In the General Assembly read three times and ratified this the 27th day of June, 2017.

s/ Daniel J. Forest
President of the Senate

s/ Tim Moore
Speaker of the House of Representatives

s/ Roy Cooper
Governor

Approved 10:15 a.m. this 28th day of July, 2017