

House Bill 1149

By: Representatives McLeod of the 105th, Alexander of the 66th, Thomas of the 56th, Dukes of the 154th, Carter of the 92nd, and others

A BILL TO BE ENTITLED
AN ACT

1 To amend Chapter 9 of Title 17 of the Official Code of Georgia Annotated, relating to
2 verdict and judgment in criminal cases generally, so as to provide for a motion to vacate and
3 expunge the record of any previous conviction for certain offenses regarding marijuana; to
4 provide for procedures for considering such motions; to provide for responses from
5 prosecuting attorneys; to provide for standards and conditions for the granting of such
6 motions; to provide for fees; to provide for hearings; to provide for forms; to provide for
7 related matters; to repeal conflicting laws; and for other purposes.

8 BE IT ENACTED BY THE GENERAL ASSEMBLY OF GEORGIA:

9 **SECTION 1.**

10 Chapter 9 of Title 17 of the Official Code of Georgia Annotated, relating to verdict and
11 judgment in criminal cases generally, is amended by adding a new article to read as follows:

12 "ARTICLE 5

13 17-9-80.

14 (a) Any person who has been convicted of a violation of subsection (b) of Code
15 Section 16-13-2 or subsection (j) of Code Section 16-13-30 may file with the court in
16 which he or she was convicted an application to have such conviction vacated. The
17 application shall be filed as a motion in the original criminal case. On and after
18 July 1, 2020, each person convicted of a violation of subsection (b) of Code
19 Section 16-13-2 or subsection (j) of Code Section 16-13-30 shall be informed of such right
20 at the time of sentencing.

21 (b) A verified application to have the judgment vacated under this Code section may be
22 filed no sooner than five years after the completion of the person's sentence, or five years
23 after the successful completion of the person's probation or parole, whichever occurs later.

24 (c) Upon the payment of the filing fee and the filing of the application, the clerk of the
25 court in which the person was convicted shall serve a notice of filing upon the prosecuting
26 attorney for such court. The prosecuting attorney shall file a response within 60 days after
27 being served with the notice of filing. Such time period may be extended for good cause,
28 but the hearing on the application to vacate the judgment shall occur no later than 120 days
29 following the filing of the application. No hearing upon the merits of the application shall
30 be scheduled until the prosecuting attorney's response has been filed, or if no response is
31 filed, no later than 120 days after the filing of the application.

32 (d) In any case in which the prosecuting attorney objects that the application is grossly
33 incomplete, the court shall order the person or agency originating the application to
34 supplement the application to provide the missing information or details.

35 (e) Upon the filing of the prosecuting attorney's response to an application, or if no
36 response is filed, no later than 120 days after the filing of the application, the court shall
37 either set a date for a hearing and the clerk of such court shall notify the prosecuting
38 attorney of such hearing or proceed under subsection (i) of this Code section.

39 (f) In responding to an application pursuant to this Code section, if the prosecuting
40 attorney shall object to the vacating of a judgment and expungement of a record, the
41 prosecuting attorney shall specify in the response the reasons for believing a denial of the
42 application is justified. At the hearing at which the applicant or his or her attorney must
43 be present, the applicant shall have the burden of proving by clear and convincing evidence
44 that:

45 (1) Vacating the judgment and expunging the record is consistent with the welfare and
46 safety of the public;

47 (2) The action is supported by his or her behavior since the conviction or convictions,
48 as evidenced that he or she has been active in rehabilitative activities in prison and is
49 living a law-abiding life since release or while on probation;

50 (3) The vacation and expungement is warranted by the interests of justice; and

51 (4) Any other matter deemed appropriate or necessary by the court to make a
52 determination regarding the petition for expungement is met.

53 At the hearing, the applicant may testify as to the specific adverse consequences he or she
54 may be subject to if the application is denied. The court may hear testimony of witnesses
55 and any other matter that the court deems proper and relevant to its determination regarding
56 the application. The prosecuting attorney may present proof of any extraordinary
57 circumstances that exist to deny the application.

58 (g) If the court determines that circumstances warrant vacation and expungement and that
59 the harm otherwise resulting to the applicant clearly outweighs the public interest in the
60 criminal history record information being publicly available, then the original conviction

61 or convictions shall be vacated and the records shall be expunged. The order of
62 expungement shall not preclude a prosecuting attorney from retaining a nonpublic record
63 for law enforcement purposes only.

64 (h) The court may order the judgment vacated, and upon the judgment being vacated, the
65 court shall dismiss with prejudice such charges. The court shall then order that all records
66 in the custody of the court and any records in the custody of any other agency or official,
67 including law enforcement records, be expunged, provided that the court finds that:

68 (1) The person had not, after July 1, 2020, had a conviction vacated and record expunged
69 pursuant to this Code section;

70 (2) The person had not in the five years prior to the filing of the application to have the
71 judgment vacated been convicted of a felony or a misdemeanor;

72 (3) No proceeding concerning a felony or misdemeanor is pending or being instituted
73 against the person; and

74 (4) The person has been rehabilitated and poses no significant threat of recidivism.

75 (i) If the court has received a response from the prosecuting attorney stating no objection
76 to the application to have the judgment vacated, or if 120 days have elapsed since the filing
77 of the application and no response has been received from the prosecuting attorney,
78 the court may, without a hearing, vacate the judgment in the manner established in
79 subsection (h) of this Code section.

80 (j) Upon entry of an order vacating and expunging a conviction, the original conviction
81 shall be vacated and the record shall be expunged. The court and other agencies, including
82 the Georgia Crime Information Center, having records of such conviction shall be notified
83 of the order vacating and expunging such records by the clerk of the court. The court and
84 such other agencies shall cause such records to be deleted or removed from their computer
85 systems so that the matter shall not appear on official state performed criminal background
86 checks. The court and other agencies shall reply to any inquiry that no record exists on the
87 matter. The person whose record is expunged shall not have to disclose the fact of the
88 record or any matter relating thereto on an application for employment, credit, or any other
89 type of application.

90 (k) An order vacating a conviction under this Code section shall not extend or revive an
91 expired statute of limitations, shall not constitute a finding of legal error regarding the
92 proceedings leading to or resulting in the conviction, shall not nullify any findings of fact
93 or conclusions of law made by the trial court or any appellate court regarding the
94 conviction, and shall not constitute a finding of innocence regarding the conviction.

95 (l) The Administrative Office of the Courts shall establish a form application to be used
96 in filing an application to have judgment vacated and records expunged.

97 (m) The filing fee for an application to have judgment vacated and records expunged
98 pursuant to this Code section shall be \$50.00 and shall not be refundable.

99 (n) Upon the issuance of an order vacating and expunging a conviction pursuant to this
100 Code section, the applicant shall be charged an expungement fee of \$250.00. The order
101 vacating and expunging the record shall not be effective until such fee has been paid."

102 **SECTION 2.**

103 All laws and parts of laws in conflict with this Act are repealed.