

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1213
Senate Judiciary II Committee Substitute Adopted 8/12/05

Short Title: Expunge Multiple Charges/Occur Within One Yr.

(Public)

Sponsors:

Referred to:

April 13, 2005

A BILL TO BE ENTITLED

1 AN ACT TO PROVIDE THAT A PERSON CHARGED WITH MULTIPLE
2 OFFENSES UNDER CERTAIN CIRCUMSTANCES MAY HAVE THOSE
3 CHARGES EXPUNGED IF THE CHARGES ARE SUBSEQUENTLY
4 DISMISSED OR FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE ARE
5 ENTERED AT THE SAME TERM OF COURT.
6

7 The General Assembly of North Carolina enacts:

8 **SECTION 1.** G.S. 15A-146 reads as rewritten:

9 **"§ 15A-146. Expunction of records when charges are dismissed or there are**
10 **findings of not guilty.**

11 (a) If any person is charged with a crime, either a misdemeanor or a felony, or
12 was charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and
13 the charge is dismissed, or a finding of not guilty or not responsible is entered, that
14 person may apply to the court of the county where the charge was brought for an order
15 to expunge from all official records any entries relating to his apprehension or trial. The
16 court shall hold a hearing on the application and, upon finding that the person had not
17 previously received an expungement under this section, G.S. 15A-145, or G.S. 90-96,
18 and that the person had not previously been convicted of any felony under the laws of
19 the United States, this State, or any other state, the court shall order the expunction. No
20 person as to whom such an order has been entered shall be held thereafter under any
21 provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false
22 statement or response to any inquiry made for any purpose, by reason of his failure to
23 recite or acknowledge any expunged entries concerning apprehension or trial.

24 (a1) Notwithstanding subsection (a) of this section, if a person is charged with
25 multiple offenses and the charges are dismissed, or findings of not guilty or not
26 responsible are made, then a person may apply to have each of those charges expunged
27 if the offenses occurred within the same 12-month period of time or if the charges are
28 dismissed or findings are made at the same term of court. Unless circumstances
29 otherwise clearly provide, the phrase "term of court" shall mean one week for superior

1 court and one day for district court. There is no requirement that the multiple offenses
2 arise out of the same transaction or occurrence or that the multiple offenses were
3 consolidated for judgment. The court shall hold a hearing on the application. If the court
4 finds that the person had not previously received an expungement under this subsection,
5 that the person had not previously received an expungement under G.S. 15A-145 or
6 G.S. 90-96, and that the person had not previously been convicted of any felony under
7 the laws of the United States, this State, or any other state, the court shall order the
8 expunction. No person as to whom such an order has been entered shall be held
9 thereafter under any provision of any law to be guilty of perjury, or to be guilty of
10 otherwise giving a false statement or response to any inquiry made for any purpose, by
11 reason of his failure to recite or acknowledge any expunged entries concerning
12 apprehension or trial.

13 (b) The court may also order that the said entries shall be expunged from the
14 records of the court, and direct all law-enforcement agencies bearing record of the same
15 to expunge their records of the entries. The clerk shall forward a certified copy of the
16 order to the sheriff, chief of police, or other arresting agency. The sheriff, chief or head
17 of such other arresting agency shall then transmit the copy of the order with the form
18 supplied by the State Bureau of Investigation to the State Bureau of Investigation, and
19 the State Bureau of Investigation shall forward the order to the Federal Bureau of
20 Investigation. The costs of expunging these records shall not be taxed against the
21 petitioner.

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

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

42 (c) The Clerk of Superior Court in each county in North Carolina shall, as soon
43 as practicable after each term of court in his county, file with the Administrative Office
44 of the Courts, the names of those persons granted an expungement under the provisions

1 of this section and the Administrative Office of the Courts shall maintain a confidential
2 file containing the names of persons granted such expungement. The information
3 contained in such files shall be disclosed only to judges of the General Court of Justice
4 of North Carolina for the purpose of ascertaining whether any person charged with an
5 offense has been previously granted an expungement."

6 **SECTION 2.** This act becomes effective October 1, 2005.