

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2005

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HOUSE BILL 1213

Short Title: Expunge Multiple Charges/Occur Within 1 yr. (Public)

Sponsors: Representatives Moore, Sutton (Primary Sponsors); Parmon and Womble.

Referred to: Judiciary II.

April 13, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CHARGED WITH MULTIPLE OFFENSES MAY HAVE THOSE CHARGES EXPUNGED IF THE ALLEGED OFFENSES OCCURRED WITHIN THE SAME TWELVE-MONTH PERIOD OF TIME AND THE CHARGES ARE SUBSEQUENTLY DISMISSED OR FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE ARE ENTERED AT THE SAME TERM OF COURT.

The General Assembly of North Carolina enacts:

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

"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not ~~guilty-guilty~~; expunction of records in certain circumstances for charges of multiple offenses when charges are subsequently dismissed or there are findings of not guilty at the same term of court.

(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 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 and, upon finding that the person had not previously received an expungement under this section, G.S. 15A-145, or G.S. 90-96, 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 that occurred within the same 12-month period of time and the

1 charges are dismissed, or findings of not guilty or not responsible are entered at the
2 same term of court, then a person may apply to have each of those charges expunged.
3 There is no requirement that the multiple offenses arise out of the same transaction or
4 occurrence or that the multiple offenses were consolidated for judgment provided the
5 offenses all occurred within the same 12-month period of time. The court shall hold a
6 hearing on the application. If the court finds that the person had not previously received
7 an expungement under this section except as allowed for multiple offenses under this
8 subsection, that the person had not previously received an expungement under
9 G.S. 15A-145 or G.S. 90-96, and that the person had not previously been convicted of
10 any felony under the laws of the United States, this State, or any other state, the court
11 shall order the expunction. No person as to whom such an order has been entered shall
12 be held thereafter under any provision of any law to be guilty of perjury, or to be guilty
13 of otherwise giving a false statement or response to any inquiry made for any purpose,
14 by reason of his failure to recite or acknowledge any expunged entries concerning
15 apprehension or trial.

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

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

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

1 (c) The Clerk of Superior Court in each county in North Carolina shall, as soon
2 as practicable after each term of court in his county, file with the Administrative Office
3 of the Courts, the names of those persons granted an expungement under the provisions
4 of this section and the Administrative Office of the Courts shall maintain a confidential
5 file containing the names of persons granted such expungement. The information
6 contained in such files shall be disclosed only to judges of the General Court of Justice
7 of North Carolina for the purpose of ascertaining whether any person charged with an
8 offense has been previously granted an expungement."

9 **SECTION 2.** This act is effective when it becomes law.