

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2015

S

1

SENATE BILL 411

Short Title: Additional Expunction/Dismiss or Not Guilty. (Public)

Sponsors: Senators McKissick, Bingham, Daniel (Primary Sponsors); Clark, Robinson, Smith-Ingram, and Waddell.

Referred to: Rules and Operations of the Senate.

March 25, 2015

1 A BILL TO BE ENTITLED  
2 AN ACT TO PROVIDE THAT THE COURT, IN ITS DISCRETION, MAY ALLOW A  
3 PERSON WHO WAS CHARGED WITH A NONVIOLENT CRIME WHEN THE  
4 PERSON WAS LESS THAN 26 YEARS OLD AND LATER HAD THE CHARGES  
5 EXPUNGED AND WHO IS CHARGED WITH A SUBSEQUENT NONVIOLENT  
6 CRIME THAT WAS DISMISSED OR FOR WHICH THERE ARE FINDINGS OF NOT  
7 GUILTY TO EXPUNGE THE SUBSEQUENT CRIMINAL CHARGES.

8 The General Assembly of North Carolina enacts:

9 SECTION 1. Article 5 of Chapter 14 of the General Statutes is amended by adding  
10 a new section to read:

11 **"§ 15A-146.1. Additional expunction of records permissible when charges for nonviolent  
12 crime are dismissed or there are findings of not guilty.**

13 (a) The following definitions apply in this section:

14 (1) Crime. – A nonviolent misdemeanor or nonviolent felony.

15 (2) Nonviolent misdemeanor or nonviolent felony. – Any misdemeanor or  
16 felony except the following:

17 a. A Class A through G felony or a Class A1 misdemeanor.

18 b. An offense that includes assault as an essential element of the  
19 offense; except that the offense of misdemeanor assault under  
20 G.S. 14-33 shall be considered a nonviolent misdemeanor for  
21 purposes of this section.

22 c. An offense requiring registration pursuant to Article 27A of Chapter  
23 14 of the General Statutes, whether or not the person is currently  
24 required to register.

25 d. Any of the following sex-related or stalking offenses:  
26 G.S. 14-27.7A(b), 14-190.7, 14-190.8, 14-190.9, 14-202,  
27 14-208.11A, 14-208.18, 14-277.3, 14-277.3A, or 14-321.1.

28 e. Any felony offense in Chapter 90 of the General Statutes where the  
29 offense involves methamphetamines, heroin, or possession with  
30 intent to sell or deliver or sell and deliver cocaine.

31 f. An offense under G.S. 14-12.12(b), 14-12.13, or 14-12.14 or any  
32 offense for which punishment was determined pursuant to  
33 G.S. 14-3(c).

34 g. An offense under G.S. 14-401.16.



1                    h. Any felony offense in which a commercial motor vehicle was used in  
2                    the commission of the offense.

3            (b) Notwithstanding any other provision of law, a person who has an expunction for a  
4 crime charged against the person when the person was less than 26 years old that was dismissed  
5 or for which a finding of not guilty was entered and who is charged with a subsequent crime  
6 that is dismissed or a finding of not guilty is entered may file a petition in the court where the  
7 person was charged for an order to expunge from all official records any entries relating to the  
8 person's apprehension or trial for the subsequent crime. The petition to expunge the charges for  
9 the subsequent crime shall not be filed earlier than five years after the date that the order for the  
10 first expunction was entered. The petition shall contain, but not be limited to, the following:

11            (1) An affidavit by the petitioner that the petitioner has been of good moral  
12 character since the date the charges for the subsequent crime were dismissed  
13 or a finding of not guilty was entered and that the petitioner has not been  
14 convicted of any other felony or misdemeanor, other than a traffic violation,  
15 under the laws of the United States or the laws of this State or any other  
16 state.

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

21            (3) A statement that the petition is a motion in the cause in the case wherein the  
22 petitioner was charged.

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

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

36            Upon filing of the petition, the petition shall be served upon the district attorney of the court  
37 wherein the charge of the subsequent crime was dismissed or a finding of not guilty entered.  
38 The district attorney shall have 30 days thereafter in which to file any objection thereto and  
39 shall be duly notified as to the date of the hearing of the petition. Upon good cause shown, the  
40 court may grant the district attorney an additional 30 days to file objection to the petition. The  
41 district attorney shall make the district attorney's best efforts to contact the victim, if any, to  
42 notify the victim of the request for expunction prior to the date of the hearing.

43            (c) If the court, after hearing, finds all of the following, the court may, in its discretion,  
44 grant the additional expunction:

45            (1) The petitioner has been granted only one expunction and it was to expunge a  
46 crime charged against the petitioner when the petitioner was less than 26  
47 years old that was dismissed or for which a finding of not guilty was entered.

48            (2) The petitioner has not previously been granted an expunction under this  
49 section.

50            (3) The petitioner has remained of good moral character since the date of the  
51 criminal charge for which the petitioner is requesting an expunction.

1           (4)    The petitioner has no outstanding warrants or pending criminal cases.

2           (5)    The petitioner has no felony or misdemeanor convictions other than a traffic  
3           violation.

4           (6)    The petitioner has no outstanding restitution orders or civil judgments  
5           representing amounts ordered for restitution entered against the petitioner.

6           (7)    The criminal charge that the petitioner is requesting to have expunged is for  
7           a nonviolent misdemeanor or nonviolent felony.

8           If the court, in its discretion, grants the additional expunction, it shall order that the  
9           petitioner be restored, in the contemplation of the law, to the status the petitioner occupied  
10          before the arrest or indictment or information. If the court denies the petition, the order shall  
11          include a finding as to the reason for the denial.

12          (d)    No person as to whom an order has been entered pursuant to subsection (c) of this  
13          section shall be held thereafter under any provision of any law to be guilty of perjury or  
14          otherwise giving a false statement by reason of that person's failure to recite or acknowledge  
15          the arrest, indictment, or information. Persons pursuing certification under the provisions of  
16          Chapter 17C or 17E of the General Statutes, however, shall disclose any and all charges to the  
17          certifying Commission, regardless of whether or not the charges were expunged pursuant to the  
18          provisions of this section.

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

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

25          (f)    Any other applicable State or local government agency shall expunge from its  
26          records entries made as a result of the charges ordered expunged under this section upon receipt  
27          from the petitioner of an order entered pursuant to this section. The agency shall also reverse  
28          any administrative actions taken against a person whose record is expunged under this section  
29          as a result of the charges expunged. This subsection shall not apply to the Department of  
30          Justice for DNA records and samples stored in the State DNA Database and the State DNA  
31          Databank or to fingerprint records.

32          (g)    A person who files a petition for expunction of a criminal record under this section  
33          shall pay the clerk of superior court a fee of one hundred seventy-five dollars (\$175.00) at the  
34          time the petition is filed. Fees collected under this subsection shall be deposited in the General  
35          Fund. This subsection does not apply to petitions filed by an indigent."

36                **SECTION 2.** This act becomes effective December 1, 2015.