

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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SENATE BILL 561

Short Title: Expunction - Charges Dismissed/Not Guilty. (Public)

Sponsors: Senators J. Jackson, Britt, B. Jackson (Primary Sponsors); and Smith-Ingram.

Referred to: Rules and Operations of the Senate

April 3, 2017

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT CHARGES THAT ARE DISMISSED OR FOR WHICH THERE ARE FINDINGS OF NOT GUILTY OR NOT RESPONSIBLE MAY BE EXPUNGED WITHOUT REGARD AS TO WHETHER THE PERSON HAS RECEIVED A PRIOR EXPUNCTION.

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.

(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~~ the person's 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, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5,~~ the charge was dismissed or a finding of not guilty or not responsible was entered, 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~~ the person's 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 to have each of those 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. The court shall hold a hearing on the application. 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~~



1 ~~under G.S. 15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii)~~
2 ~~that all of the charges were dismissed or that findings of not guilty or not responsible were~~
3 ~~entered and finds~~ that the person had not previously been convicted of any felony under the
4 laws of the United States, this State, or any other state, the court shall order the expunction. No
5 person as to whom such an order has been entered shall be held thereafter under any provision
6 of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement or
7 response to any inquiry made for any purpose, by reason of his failure to recite or acknowledge
8 any expunged entries concerning apprehension or trial.

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

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

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

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

44 (d) A person charged with a crime that is dismissed pursuant to compliance with a
45 deferred prosecution agreement or the terms of a conditional discharge and who files a petition
46 for expunction of a criminal record under this section must pay the clerk of superior court a fee
47 of one hundred seventy-five dollars (\$175.00) at the time the petition is filed. Fees collected
48 under this subsection are payable to the Administrative Office of the Courts. The clerk of
49 superior court shall remit one hundred twenty-two dollars and fifty cents (\$122.50) of each fee
50 to the North Carolina Department of Public Safety for the costs of criminal record checks
51 performed in connection with processing petitions for expunctions under this section. The

1 remaining fifty-two dollars and fifty cents (\$52.50) of each fee shall be retained by the
2 Administrative Office of the Courts and used to pay the costs of processing petitions for
3 expunctions under this section. This subsection does not apply to petitions filed by an
4 indigent."

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