

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2013

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HOUSE BILL 801

Short Title: Multiple Expunctions/Dismissal or Not Guilty. (Public)

Sponsors: Representatives D. Hall and Harrison (Primary Sponsors).

For a complete list of Sponsors, refer to the North Carolina General Assembly Web Site.

Referred to: Judiciary Subcommittee B.

April 11, 2013

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON MAY OBTAIN AN EXPUNCTION FOR ANY CHARGES THAT WERE DISMISSED OR FOR WHICH A FINDING OF NOT GUILTY OR NOT RESPONSIBLE IS ENTERED AND TO PROVIDE THAT NO FEE SHALL BE CHARGED FOR THE FIRST PETITION TO EXPUNGE A CHARGE FROM A PERSON'S RECORD BUT THAT A FEE SHALL BE CHARGED FOR ANY PETITIONS FILED TO EXPUNGE ANY SUBSEQUENT CHARGES.

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 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, 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 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,~~



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

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

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

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

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

46 (d) No person shall be charged a fee for the person's first expunction under this section.
47 A person who files a petition for a second or subsequent expunction under this section must pay
48 the clerk of superior court a fee of one hundred fifty dollars (\$150.00) at the time the petition is
49 filed. Fees collected under this subsection shall be deposited in the General Fund. This
50 requirement to pay a fee under this subsection does not apply to petitions filed by an indigent."

51 **SECTION 2.** This act becomes effective December 1, 2013.