

GENERAL ASSEMBLY OF NORTH CAROLINA
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SENATE DRS45136-LH-63 (01/28)

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

Sponsors: Senators McKissick, Bingham, and Daniel (Primary Sponsors).

Referred to:

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.

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



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

- 9 (1) An affidavit by the petitioner that the petitioner has been of good moral
10 character since the date the charges for the subsequent crime were dismissed
11 or a finding of not guilty was entered and that the petitioner has not been
12 convicted of any other felony or misdemeanor, other than a traffic violation,
13 under the laws of the United States or the laws of this State or any other
14 state.
- 15 (2) Verified affidavits of two persons who are not related to the petitioner or to
16 each other by blood or marriage, that they know the character and reputation
17 of the petitioner in the community in which the petitioner lives, and that the
18 petitioner's character and reputation are good.
- 19 (3) A statement that the petition is a motion in the cause in the case wherein the
20 petitioner was charged.
- 21 (4) An application on a form approved by the Administrative Office of the
22 Courts requesting and authorizing a name-based State and national criminal
23 history record check by the Department of Justice using any information
24 required by the Administrative Office of the Courts to identify the
25 individual, a search by the Department of Justice for any outstanding
26 warrants on pending criminal cases, and a search of the confidential record
27 of expunctions maintained by the Administrative Office of the Courts. The
28 application shall be forwarded to the Department of Justice and to the
29 Administrative Office of the Courts, which shall conduct the searches and
30 report their findings to the court.
- 31 (5) An affidavit by the petitioner that no restitution orders or civil judgments
32 representing amounts ordered for restitution entered against the petitioner
33 are outstanding.

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

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

- 43 (1) The petitioner has been granted only one expunction and it was to expunge a
44 crime charged against the petitioner when the petitioner was less than 26
45 years old that was dismissed or for which a finding of not guilty was entered.
- 46 (2) The petitioner has not previously been granted an expunction under this
47 section.
- 48 (3) The petitioner has remained of good moral character since the date of the
49 criminal charge for which the petitioner is requesting an expunction.
- 50 (4) The petitioner has no outstanding warrants or pending criminal cases.

- 1 (5) The petitioner has no felony or misdemeanor convictions other than a traffic
2 violation.
- 3 (6) The petitioner has no outstanding restitution orders or civil judgments
4 representing amounts ordered for restitution entered against the petitioner.
- 5 (7) The criminal charge that the petitioner is requesting to have expunged is for
6 a nonviolent misdemeanor or nonviolent felony.

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

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

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

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

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

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

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