

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2005

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HOUSE BILL 1213  
Senate Judiciary II Committee Substitute Adopted 8/12/05  
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Short Title: Expunge Multiple Charges/Occur Within One Yr.

(Public)

Sponsors:

Referred to:

April 13, 2005

A BILL TO BE ENTITLED

AN ACT TO PROVIDE THAT A PERSON CHARGED WITH MULTIPLE  
OFFENSES UNDER CERTAIN CIRCUMSTANCES MAY HAVE THOSE  
CHARGES EXPUNGED IF 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.**

(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 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

1 otherwise clearly provide, the phrase "term of court" shall mean one week for superior  
2 court and one day for district court. There is no requirement that the multiple offenses  
3 arise out of the same transaction or occurrence or that the multiple offenses were  
4 consolidated for judgment. The court shall hold a hearing on the application. If the court  
5 finds that the person had not previously received an expungement under this subsection,  
6 that the person had not previously received an expungement under G.S. 15A-145 or  
7 G.S. 90-96, and that the person had not previously been convicted of any felony under  
8 the laws of the United States, this State, or any other state, the court shall order the  
9 expunction. No person as to whom such an order has been entered shall be held  
10 thereafter under any provision of any law to be guilty of perjury, or to be guilty of  
11 otherwise giving a false statement or response to any inquiry made for any purpose, by  
12 reason of his failure to recite or acknowledge any expunged entries concerning  
13 apprehension or trial.

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

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

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

43 (c) The Clerk of Superior Court in each county in North Carolina shall, as soon  
44 as practicable after each term of court in his county, file with the Administrative Office

1 of the Courts, the names of those persons granted an expungement under the provisions  
2 of this section and the Administrative Office of the Courts shall maintain a confidential  
3 file containing the names of persons granted such expungement. The information  
4 contained in such files shall be disclosed only to judges of the General Court of Justice  
5 of North Carolina for the purpose of ascertaining whether any person charged with an  
6 offense has been previously granted an expungement."

7           **SECTION 2.** This act becomes effective October 1, 2005.