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SENATE BILL DRS45031-MLf-41

Short Title: Dismissal or Not Guilty/Automatic Expunction. (Public)

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

Referred to:

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF CERTAIN RECORDS
3 OF A PERSON WHEN THE CHARGE OR CHARGES AGAINST THE PERSON ARE
4 DISMISSED OR THERE ARE FINDINGS OF NOT GUILTY.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. G.S. 15A-146 reads as rewritten:

7 "§ 15A-146. Expunction of records when charges are dismissed or there are findings of not
8 guilty.

9 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was
10 charged with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is
11 dismissed, ~~that person may petition the court of the county where the charge was brought for an~~
12 ~~order to expunge from all official records any entries relating to his apprehension or trial. The~~
13 ~~court shall hold a hearing on the petition and, upon finding that the person had not previously~~
14 ~~been convicted of any felony under the laws of the United States, this State, or any other state,~~
15 ~~the court shall order the expunction. the prosecutor or other judicial officer who ordered the~~
16 ~~dismissal shall provide notice of the dismissal to the court and the court shall order the~~
17 ~~expunction. No person as to whom such an order has been entered shall be held thereafter under~~
18 any provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false
19 statement or response to any inquiry made for any purpose, by reason of his failure to recite or
20 acknowledge any expunged entries concerning apprehension or trial.

21 (a1) Notwithstanding subsection (a) of this section, if a person is charged with multiple
22 offenses and the charges are dismissed, then ~~a person may petition to have each of the dismissed~~
23 ~~charges expunged. The court shall hold a hearing on the petition. If the court finds that the person~~
24 ~~had not previously been convicted of any felony under the laws of the United States, this State,~~
25 ~~or any other state, the court shall order the expunction. the prosecutor or other judicial officer who~~
26 ~~ordered the dismissal shall provide notice of the dismissal to the court and the court shall order~~
27 ~~the expunction of each charge.~~

28 (a2) If any person is charged with a crime, either a misdemeanor or a felony, or an
29 infraction under G.S. 18B-302(i) prior to December 1, 1999, and a finding of not guilty or not
30 responsible is entered, ~~that person may petition the court of the county where the charge was~~
31 ~~brought for an order to expunge from all official records any entries relating to apprehension or~~
32 ~~trial of that crime. The court shall hold a hearing on the petition and upon finding that the person~~
33 ~~had not previously been convicted of any felony under the laws of the United States, this State,~~
34 ~~or any other state, the court shall order the expunction. the court that entered the finding shall~~
35 ~~order the expunction from all official records any entries relating to apprehension or trial of that~~
36 ~~crime. No person as to whom such an order has been entered shall be held thereafter under any~~



1 provision of any law to be guilty of perjury, or to be guilty of otherwise giving a false statement
2 or response to any inquiry made for any purpose, by reason of failure to recite or acknowledge
3 any expunged entries concerning that crime. If a person is charged with multiple offenses and
4 findings of not guilty or not responsible are made on charges, then ~~a person may petition to have~~
5 ~~each of the charges disposed by a finding of not guilty or not responsible expunged. The court~~
6 ~~shall hold a hearing on the petition. If the court finds that the person had not previously been~~
7 ~~convicted of any felony under the laws of the United States, this State, or any other state, the~~
8 ~~court shall order the expunction.~~ the court that entered the findings shall order the expunction
9 from all official records any entries relating to apprehension or trial of those crimes.

10 ...

11 (b1) ~~Any person entitled to expungement under this section may also apply to the court for~~
12 ~~an order expunging. The court shall also order the expunction of DNA records when the person's~~
13 ~~case has been dismissed by the trial court and the person's DNA record or profile has been~~
14 ~~included in the State DNA Database and the person's DNA sample is stored in the State DNA~~
15 ~~Databank. A copy of the application for expungement of the DNA record or DNA sample shall~~
16 ~~be served on the district attorney for the judicial district in which the felony charges were brought~~
17 ~~not less than 20 days prior to the date of the hearing on the application. If the application for~~
18 ~~expungement is granted, a certified copy of the trial court's order dismissing the charges shall be~~
19 ~~attached to an order of expungement. Databank as a result of the case that was dismissed. The~~
20 ~~order of expungement shall include the name and address of the defendant and the defendant's~~
21 ~~attorney and shall direct the North Carolina State Crime Laboratory to send a letter documenting~~
22 ~~expungement as required by subsection (b2) of this section.~~

23 ...

24 (c) ~~Any petition for expungement under this section shall be on a form approved by the~~
25 ~~Administrative Office of the Courts and be filed with the clerk of superior court. Upon order of~~
26 ~~expungement, the clerk shall notify State and local agencies of the court's order as provided in~~
27 ~~G.S. 15A-150 and forward the petition order to the Administrative Office of the Courts.~~

28 (d) ~~A person charged with a crime that is dismissed pursuant to compliance with a~~
29 ~~deferred prosecution agreement or the terms of a conditional discharge and who files a petition~~
30 ~~for expunction of a criminal record under this section must pay the clerk of superior court a fee~~
31 ~~of one hundred seventy five dollars (\$175.00) at the time the petition is filed. Fees collected~~
32 ~~under this subsection are payable to the Administrative Office of the Courts. The clerk of superior~~
33 ~~court shall remit one hundred twenty two dollars and fifty cents (\$122.50) of each fee to the~~
34 ~~North Carolina Department of Public Safety for the costs of criminal record checks performed in~~
35 ~~connection with processing petitions for expunctions under this section. The remaining fifty two~~
36 ~~dollars and fifty cents (\$52.50) of each fee shall be retained by the Administrative Office of the~~
37 ~~Courts and used to pay the costs of processing petitions for expunctions under this section. This~~
38 ~~subsection does not apply to petitions filed by an indigent."~~

39 **SECTION 2.** G.S. 15A-151.5 reads as rewritten:

40 "**§ 15A-151.5. Prosecutor access to expunged files.**

41 (a) Notwithstanding any other provision of this Article, the Administrative Office of the
42 Courts shall make all confidential files maintained under G.S. 15A-151 electronically available
43 to all prosecutors of this State if the criminal record was expunged on or after July 1, 2018, under
44 any of the following:

45 ...

46 (7) G.S. 15A-145.6. Expunctions for certain defendants convicted of prostitution.

47 (8) ~~G.S. 15A-146(a). Expunction of records when charges are dismissed.~~

48 (9) ~~G.S. 15A-146(a1). Expunction of records when charges are dismissed.~~

49 (10) G.S. 15A-146. Expunction of records when charges are dismissed or there are
50 findings of not guilty.

51"

1 **SECTION 3.** The Administrative Office of the Courts shall revise or establish any
2 forms necessary to implement the provisions of G.S. 15A-146, as amended by Section 1 of this
3 act.

4 **SECTION 4.** Section 1 of this act becomes effective December 1, 2019, and applies
5 to dismissals ordered and findings entered on or after that date. Section 2 of this act becomes
6 effective December 1, 2019, and applies to criminal records expunged on or after that date. The
7 remainder of this act becomes effective December 1, 2019.