

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 571
Committee Substitute Favorable 4/26/17
Third Edition Engrossed 4/27/17

Short Title: Automatic Expunction/Wrongful Conviction.

(Public)

Sponsors:

Referred to:

April 6, 2017

1 A BILL TO BE ENTITLED
2 AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF A PERSON'S
3 RECORD IF THE PERSON IS WRONGLY CONVICTED, INCARCERATED, AND
4 EXONERATED.

5 The General Assembly of North Carolina enacts:

6 SECTION 1. Article 5 of Chapter 15A of the General Statutes is amended by
7 adding a new section to read:

8 "**§ 15A-149A. Expunction of records when person is wrongly convicted and later cleared.**

9 (a) Any person who, having been convicted of a felony and having been imprisoned
10 therefor in a prison of this State and who is determined to be innocent of all charges as a result
11 of a successful appeal, motion for appropriate relief, or writ of habeas corpus, the reviewing
12 court that determined the person was wrongfully convicted and ordered the person be
13 discharged from prison shall also enter an order to expunge from all official records any entries
14 relating to the person's arrest, charge, or trial as provided by this section.

15 A person who was wrongly convicted of a felony and having been imprisoned therefor in a
16 prison of this State and who is determined to be innocent of all charges and who was
17 discharged from prison prior to December 1, 2017, may petition the reviewing court that
18 determined the person was wrongfully convicted and ordered the person's discharge from
19 prison for an order to expunge from all official records any entries relating to the person's
20 arrest, charge, or trial as provided by this section.

21 (b) If any person is wrongly convicted and incarcerated but later is discharged from
22 prison as a result of a determination pursuant to Article 92 of this Chapter that the person is
23 innocent, the three-judge panel that determined the person's innocence and entered the
24 dismissal of the charges shall also enter an order to expunge from all official records any
25 entries relating to the person's arrest, charge, or trial as provided by this section.

26 A person who was wrongly convicted and incarcerated and was discharged from prison
27 prior to December 1, 2017, as a result of a determination pursuant to Article 92 of this Chapter
28 that the person was innocent, may petition the three-judge panel that determined the person's
29 innocence and entered the dismissal of the charges for an order to expunge from all official
30 records any entries relating to the person's arrest, charge, or trial as provided by this section.
31 The court shall hold a hearing on the application and, upon finding that the person was wrongly
32 convicted and incarcerated but later discharged from prison as a result of the Commission's
33 determination of the person's innocence, shall enter an order to expunge all official records as
34 provided by this section.

35 (c) The order of expunction shall include all of the following:



1 (1) An instruction that any entries relating to the person's arrest, charge, or trial
2 shall be expunged from the records of the court, and all law enforcement
3 agencies; the Department of Public Safety, Combined Records Section; the
4 State Bureau of Investigation; the Division of Motor Vehicles; and any other
5 State or local government agencies identified by the petitioner as bearing
6 record of the same, to expunge their records of the entries.

7 (2) An instruction that, prior to expunging records, the court and all law
8 enforcement agencies; the Department of Public Safety, Combined Records
9 Section; the State Bureau of Investigation; the Division of Motor Vehicles;
10 and any other State or local government agencies identified by the petitioner
11 as bearing record or any entries relating to the person's arrest, charge, or trial
12 shall be sent to the Administrative Office of the Courts to be maintained in a
13 confidential file under seal, only to be released to the General Court of
14 Justice of North Carolina in response to a court order by a Superior Court
15 Judge who has made a finding of exceptional circumstances.

16 (c1) The expunction shall be automatic and the person shall not be required to file a
17 petition for the expunction. The costs of expunging the records, as required under
18 G.S. 15A-150, shall not be taxed against the petitioner. The clerk shall notify State and local
19 agencies, as provided in G.S. 15A-150, and all law enforcement agencies; the Department of
20 Public Safety, Combined Records Section; the State Bureau of Investigation; the Division of
21 Motor Vehicles; and any other State or local government agencies identified by the petitioner
22 as bearing record of the person's arrest, charge, or trial of the court's order including
23 instructions for forwarding records to the Administrative Office of the Court prior to
24 expunction, as provided in G.S. 15A-149A(c).

25 (d) No person as to whom such an order has been entered under this section shall be
26 held thereafter under any provision of any law to be guilty of perjury or to be guilty of
27 otherwise giving a false statement or response to any inquiry made for any purpose, by reason
28 of the person's failure to recite or acknowledge any expunged entries concerning arrest, charge,
29 or trial.

30 (e) It is the intent of the General Assembly that the State pay the cost for any legal
31 services provided by counsel pursuant to this section and that the State also waive any legal
32 fees or court costs associated with a proceeding under this section to have records expunged.
33 Therefore, notwithstanding any other provision of law, a person discharged from prison prior to
34 December 1, 2017, who may petition the court for an expunction under this section, is entitled
35 to services of counsel for the expunction proceeding regardless of the person's financial status.
36 Further, notwithstanding any other provision of law, any legal fee or court cost associated with
37 the proceeding shall be waived.

38 A person who wants counsel appointed shall file with the clerk of court a written request for
39 the appointment of counsel. The court shall appoint counsel in accordance with rules adopted
40 by the Office of Indigent Defense Services. Appointment of counsel shall be made no later than
41 10 days from the date of receipt of the request by the clerk of court. The professional
42 relationship of counsel provided pursuant to this subsection is the same as if counsel had been
43 privately retained by the person. Unless a public defender or assistant public defender is
44 appointed to serve, private counsel appointed under this section shall receive reasonable
45 compensation to be paid by the State."

46 **SECTION 2.** This act becomes effective December 1, 2017, and applies to
47 exonerations on or after that date. Additionally, this act provides that an individual exonerated
48 prior to December 1, 2017, may petition the court for an expunction as described.