

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2015

H.B 1115
May 10, 2016
HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40596-LHa-184 (04/14)

Short Title: Automatic Expunction/Wrongful Conviction.

(Public)

Sponsors: Representative Hanes.

Referred to:

A BILL TO BE ENTITLED

AN ACT TO PROVIDE FOR THE AUTOMATIC EXPUNCTION OF A PERSON'S RECORD IF THE PERSON IS WRONGLY CONVICTED, INCARCERATED, AND LATER CLEARED OF THE CHARGE OR IF THE CHARGES AGAINST A PERSON ARE DISMISSED OR THERE ARE FINDINGS OF NOT GUILTY AND TO APPROPRIATE FUNDS TO THE ADMINISTRATIVE OFFICE OF THE COURTS TO HELP IMPLEMENT THIS ACT.

The General Assembly of North Carolina enacts:

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

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

(a) If any person is wrongly convicted and incarcerated, but later is discharged from prison as a result of a successful appeal, motion for appropriate relief, or writ of habeas corpus, the reviewing court that determined the person was wrongfully convicted and ordered the person be discharged from prison shall also enter an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial as provided by this section.

(b) If any person is wrongly convicted and incarcerated, but later is discharged from prison as a result of a determination by the North Carolina Innocence Inquiry Commission that the person is innocent, the three-judge panel that determined the person's innocence and entered the dismissal of the charges shall also enter an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial as provided by this section.

(c) The order of expunction shall include an instruction that any entries relating to the person's apprehension, charge, or trial shall be expunged from the records of the court and direct all law enforcement agencies, the Division of Adult Correction of the Department of Public Safety, the Division of Motor Vehicles, or any other State or local government agencies identified by the petitioner as bearing record of the same to expunge their records of the entries. The clerk shall notify State and local agencies of the court's order as provided in G.S. 15A-150. The expunction shall be automatic and the person shall not be required to file a petition for the expunction. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed against the petitioner.

(d) No person as to whom such an order has been entered under this section 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 the person's failure to recite or acknowledge any expunged entries concerning apprehension, charge, or trial."

SECTION 2. G.S. 15A-146 reads as rewritten:



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1 **"§ 15A-146. Expunction of records when charges are dismissed or there are findings of not**
2 **guilty.**

3 (a) If any person is charged with a crime, either a misdemeanor or a felony, or was charged
4 with an infraction under G.S. 18B-302(i) prior to December 1, 1999, and the charge is dismissed,
5 or a finding of not guilty or not responsible is entered, ~~that person may apply to the court of the~~
6 ~~county where the charge was brought for the court entering the dismissal, or finding of not guilty~~
7 ~~or not responsible shall also enter an order to expunge from all official records any entries relating~~
8 ~~to his the person's apprehension or trial. The court shall hold a hearing on the application and,~~
9 ~~upon finding that the person had not previously received an expungement under this section, G.S.~~
10 ~~15A-145, 15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and that the person had~~
11 ~~not previously been convicted of any felony under the laws of the United States, this State, or any~~
12 ~~other state, the court shall order the expunction. No person as to whom such an order has been~~
13 ~~entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be~~
14 ~~guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by~~
15 ~~reason of his failure to recite or acknowledge any expunged entries concerning apprehension or~~
16 ~~trial.~~

17 (a1) ~~Notwithstanding subsection (a) of this section, if a person is charged with multiple~~
18 ~~offenses and all the charges are dismissed, or findings of not guilty or not responsible are made,~~
19 ~~then a person may apply to have each of those charges expunged if the offenses occurred within~~
20 ~~the same 12-month period of time or if the charges are dismissed or findings are made at the same~~
21 ~~term of court. Unless circumstances otherwise clearly provide, the phrase "term of court" shall~~
22 ~~mean one week for superior court and one day for district court. There is no requirement that the~~
23 ~~multiple offenses arise out of the same transaction or occurrence or that the multiple offenses were~~
24 ~~consolidated for judgment. The court shall hold a hearing on the application. If the court finds (i)~~
25 ~~that the person had not previously received an expungement under this subsection, or that any~~
26 ~~previous expungement received under this subsection occurred prior to October 1, 2005 and was~~
27 ~~for an offense that occurred within the same 12-month period of time, or was dismissed or~~
28 ~~findings made at the same term of court, as the offenses that are the subject of the current~~
29 ~~application, (ii) that the person had not previously received an expungement under G.S. 15A-145,~~
30 ~~15A-145.1, 15A-145.2, 15A-145.3, 15A-145.4, or 15A-145.5, and (iii) that the person had not~~
31 ~~previously been convicted of any felony under the laws of the United States, this State, or any~~
32 ~~other state, the court shall order the expunction. No person as to whom such an order has been~~
33 ~~entered shall be held thereafter under any provision of any law to be guilty of perjury, or to be~~
34 ~~guilty of otherwise giving a false statement or response to any inquiry made for any purpose, by~~
35 ~~reason of his failure to recite or acknowledge any expunged entries concerning apprehension or~~
36 ~~trial.~~

37 (b) The court ~~may~~ shall also order that the said entries, including civil revocations of
38 drivers licenses as a result of the underlying charge, ~~shall~~ be expunged from the records of the
39 court, and direct all law-enforcement agencies, the Division of Adult Correction of the Department
40 of Public Safety, the Division of Motor Vehicles, and any other State or local government
41 agencies identified by the petitioner as bearing record of the same to expunge their records of the
42 entries, including civil revocations of drivers licenses as a result of the underlying charge being
43 expunged. This subsection does not apply to civil or criminal charges based upon the civil
44 revocation, or to civil revocations under G.S. 20-16.2. The clerk shall notify State and local
45 agencies of the court's order as provided in G.S. 15A-150. The clerk shall forward a certified copy
46 of the order to the Division of Motor Vehicles for the expunction of a civil revocation provided the
47 underlying criminal charge is also expunged. The civil revocation of a drivers license shall not be
48 expunged prior to a final disposition of any pending civil or criminal charge based upon the civil
49 revocation. The costs of expunging the records, as required under G.S. 15A-150, shall not be taxed
50 against the petitioner.

1 (b1) ~~Any person entitled to expungement under this section may also apply to the court for~~
2 ~~an order expunging DNA records when the person's case has been~~ When a person entitled to
3 expungement under this section has his or her case dismissed by the trial court and the person's
4 DNA record or profile has been included in the State DNA Database and the person's DNA
5 sample is stored in the State DNA Databank. A copy of the application for expungement of the
6 DNA record or DNA sample shall be served on the district attorney for the judicial district in
7 which the felony charges were brought not less than 20 days prior to the date of the hearing on the
8 application. If the application for expungement is granted, a certified copy of the trial court's order
9 dismissing the charges shall be attached to an order of expungement. Databank, the court shall
10 also enter an order to expunge the DNA record and DNA sample. The order of expungement shall
11 include the name and address of the defendant and the defendant's attorney and shall direct the
12 North Carolina State Crime Laboratory to send a letter documenting expungement as required by
13 subsection (b2) of this section.

14 (b2) Upon receiving an order of expungement entered pursuant to subsection (b1) of this
15 section, the North Carolina State Crime Laboratory shall purge the DNA record and all other
16 identifying information from the State DNA Database and the DNA sample stored in the State
17 DNA Databank covered by the order, except that the order shall not apply to other offenses
18 committed by the individual that qualify for inclusion in the State DNA Database and the State
19 DNA Databank. A letter documenting expungement of the DNA record and destruction of the
20 DNA sample shall be sent by the North Carolina State Crime Laboratory to the defendant and the
21 defendant's attorney at the address specified by the court in the order of expungement.

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

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

36 (e) Notwithstanding any other provision of this section, the arrest records of a person
37 charged with any of the following offenses shall not be expunged even though the case may be
38 dismissed or a finding of not guilty or not responsible is entered on behalf of the defendant:

39 (1) An offense under Article 7B of Chapter 14 of the General Statutes.

40 (2) An offense under G.S. 50B-4.1(d)."

41 **SECTION 3.** There is appropriated from the General Fund to the Judicial Department
42 to be allocated to the Administrative Office of the Courts the sum of ten thousand dollars
43 (\$10,000) to assist with the cost of implementing this act.

44 **SECTION 4.** Sections 3 and 4 of this act become effective July 1, 2016. The
45 remainder of this act becomes effective December 1, 2016.