

GENERAL ASSEMBLY OF NORTH CAROLINA
SESSION 2017

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HOUSE BILL 571
Committee Substitute Favorable 4/26/17

Short Title: Automatic Expunction/Wrongful Conviction.

(Public)

Sponsors:

Referred to:

April 6, 2017

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
EXONERATED.

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) Any person who, having been convicted of a felony and having been imprisoned therefor in a prison of this State and who is determined to be innocent of all charges 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.

A person who was wrongly convicted of a felony and having been imprisoned therefor in a prison of this State and who is determined to be innocent of all charges and who was discharged from prison prior to December 1, 2017, may petition the reviewing court that determined the person was wrongfully convicted and ordered the person's discharge from prison for 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 pursuant to Article 92 of this Chapter 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.

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



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1 direct all law enforcement agencies, the Department of Public Safety, Combined Records
2 Section; the State Bureau of Investigation, the Division of Motor Vehicles, or any other State or
3 local government agencies identified by the petitioner as bearing record of the same to expunge
4 their records of the entries. The clerk shall notify State and local agencies of the court's order,
5 as provided in G.S. 15A-150. The expunction shall be automatic and the person shall not be
6 required to file a petition for the expunction. The costs of expunging the records, as required
7 under G.S. 15A-150, shall not be taxed against the petitioner.

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

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

21 A person who wants counsel appointed shall file with the clerk of court a written request for
22 the appointment of counsel. The court shall appoint counsel in accordance with rules adopted
23 by the Office of Indigent Defense Services. Appointment of counsel shall be made no later than
24 10 days from the date of receipt of the request by the clerk of court. The professional
25 relationship of counsel provided pursuant to this subsection is the same as if counsel had been
26 privately retained by the person. Unless a public defender or assistant public defender is
27 appointed to serve, private counsel appointed under this section shall receive reasonable
28 compensation to be paid by the State."

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