

GENERAL ASSEMBLY OF NORTH CAROLINA  
SESSION 2017

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HOUSE PRINCIPAL CLERK

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HOUSE BILL DRH40324-LHa-88A (03/01)

Short Title: Automatic Expunction/Wrongful Conviction. (Public)

Sponsors: Representatives Hanes, Hardister, Dobson, and Quick (Primary Sponsors).

Referred to:

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 LATER CLEARED OF THE CHARGE AND TO APPROPRIATE FUNDS TO THE  
5 ADMINISTRATIVE OFFICE OF THE COURTS TO HELP IMPLEMENT THIS ACT.

6 The General Assembly of North Carolina enacts:

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

9 **"§ 15A-149A. Expunction of records when person is wrongly convicted and later cleared.**

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

15 A person who was wrongly convicted and incarcerated and who was discharged from  
16 prison prior to December 1, 2017, may petition the reviewing court that determined the person  
17 was wrongfully convicted and ordered the person's discharge from prison for an order to  
18 expunge from all official records any entries relating to the person's apprehension, charge, or  
19 trial as provided by this section. The court shall hold a hearing on the application and, upon  
20 finding that the person was wrongly convicted and incarcerated but later discharged from  
21 prison, shall enter an order to expunge all official records as provided by this section.

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

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



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

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

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

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

31       **SECTION 2.** There is appropriated from the General Fund to the Judicial  
32 Department to be allocated to the Administrative Office of the Courts the sum of ten thousand  
33 dollars (\$10,000) to assist with the cost of implementing this act.

34       **SECTION 3.** Sections 2 and 3 of this act become effective July 1, 2017. The  
35 remainder of this act becomes effective December 1, 2017.