SENATE BILL 233:
Automatic Expunction/Mistaken Identity

2015-2016 General Assembly

Committee:	House Judiciary II	**Date:**	July 28, 2015
Introduced by:	Sens. McKissick, Bingham, Daniel	**Prepared by:**	Susan Sitze*
Analysis of:	First Edition		Committee Counsel

SUMMARY: Senate Bill 233 would provide for the automatic expunction of certain records of a person when the charge or charges against the person are dismissed as a result of identity theft or mistaken identity.

CURRENT LAW: In limited circumstances, North Carolina law permits the expunction of certain offenses from a person's criminal record. Expunction is the process by which a record of criminal conviction is removed by order of the court, and the individual is restored to the status he or she occupied before the arrest or indictment. The terms 'expunction' and 'expungement' are often used interchangeably, and both appear in the statutes. There are several requirements that must be met for expunction and a person may generally be granted only one expungement in his or her lifetime.

G.S. 15A-147 provides for the expunction of records when a charge is dismissed, there is a finding of not guilty, or the conviction is set aside in a case where a person is charged with a crime as a result of someone else using the person's identifying information to commit an infraction or crime. When the charge against the person is dismissed, a finding of not guilty is made, or the conviction is set aside, the person can apply to have the charge expunged.
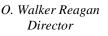
The application is made by petition or written motion to the court where the charge was last pending on a form approved by the Administrative Office of the Courts supplied by the clerk of court. The petition or motion seeks an order to expunge from all official records any entries relating to the person's apprehension, charge, or trial. If the court finds that that the person's identity was used without permission and the charges were dismissed or the person was found not guilty, the court shall order the expunction.

The effect of the expungement is that these entries are removed from the records of the court, the Division of Motor Vehicles (DMV), and other State and local government agencies identified by the petitioner. Additionally, DMV and the Division of Adult must reverse any administrative actions taken against a person whose record is expunged by this section.

BILL ANALYSIS: Senate Bill 233 allows for expunction of records in instances of mistaken identity. The act defines "mistaken identity" as "the erroneous arrest of a person for a crime as a result of misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime."

In instances of mistaken identity where there is a finding of not guilty or the conviction is set aside, the process the aggrieved person applies by petition or written motion to the court where the charge was last pending.

However, if the charge against the named person is dismissed, there is a process for automatic expunction. The prosecutor or other judicial officer who ordered the dismissal must provide notice to

the court of the dismissal. The court must order the expunction of all official records containing any entries relating to the person's apprehension, charge, or trial and must direct all law enforcement officers, the Division of Adult Corrections of the Department of Public Safety, and the DMV to expunge their records.

EFFECTIVE DATE: This act becomes effective December 1, 2015, and applies to charges filed on or after that date.

*Brad Krehely, Committee Counsel, substantially contributed to this summary.