

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1084 (Second Edition)

SHORT TITLE: Expunge Nonviolent Felonies/Young Offenders.

SPONSOR(S): Representatives Bordsen and Crawford

	FISCAL IMPACT				
	Yes (X)	No ()	No Estimate Available ()		
	<u>FY 2005-06</u>	<u>FY 2006-07</u>	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>
REVENUES:	\$59,600	\$41,300	\$22,900	\$22,900	\$22,900
EXPENDITURES:					
Judicial Branch	\$36,750	\$26,442	\$13,858	\$13,858	\$13,858
Justice	\$80,831	\$48,884	\$28,712	\$28,712	\$28,712
TOTAL EXPENDITURES:	\$117,581	\$75,326	\$42,570	\$42,570	\$42,570
POSITIONS (cumulative)-DOJ:	1	1	0.5	0.5	0.5
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED:	Judicial Branch; Department of Justice				
EFFECTIVE DATE:	December 1, 2005				

BILL SUMMARY: This bill would enact new G.S. 15A-149 to allow expunction of records for nonviolent felonies committed by first-time offenders who were under the age of 18 at the time of the conviction. A nonviolent felony is defined as any felony except a Class A through Class E felony, a felony with assault as an essential element of the offense, and a felony for which the convicted offender must register as a sex offender.

To be eligible for expunction under the bill, the offender must not have been previously convicted of any felony or misdemeanor other than a traffic violation, and must have remained of good behavior and been free of conviction of any felony or misdemeanor other than a traffic violation for two years from the date of conviction of the nonviolent felony to be expunged. A petition cannot be filed earlier than two years after the date of conviction or when any active sentence, period of probation, and post-release supervision has been served, whichever occurs later. The offender must also perform 100 hours of community service before filing a petition.

Source: Administrative Office of the Courts, Research and Planning (04/27/05).

ASSUMPTIONS AND METHODOLOGY:

To estimate the number of individuals eligible to file a petition for expunction under this bill, the Administrative Office of the Courts (AOC) identified the number of defendants convicted of a single nonviolent felony while under the age of eighteen by counting the number of convictions recorded per defendant’s name in each county. Using this method, AOC identified 12,254 defendants eligible for expunction due to this bill.¹

As it would be unreasonable to assume that all 12,254 eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for existing expunction provisions under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under age eighteen. In calendar year 2004, there were 244 petitions filed out of an estimated 6,900 eligible convictions, revealing that approximately 4 percent of eligible individuals actually sought to have their convictions expunged.

For the 12,254 existing convictions that would be eligible for expunction, AOC estimates that a greater proportion of individuals would seek expunction initially and at declining rates thereafter. However, each year AOC anticipates that an additional 750 convictions would become eligible for expunction. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 60 petitions annually. Table 1 below outlines the total number of petitions that would be filed each year based on the estimated numbers of eligible convictions and the rate at which eligible individuals would seek expunction.

Table 1: Estimated Number of Expunction Petitions Filed

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
<i>Existing Backlog of Convictions</i>	12,254	12,254	12,254	12,254	12,254
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	735	490	245	245	245
<i>New Convictions</i>	750	750	750	750	750
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	60	60	60	60	60
Total Estimated Petitions	795	550	305	305	305

¹ To the extent that two individuals with identical names would appear to be one individual with multiple convictions, this approximation would underestimate the number of defendants eligible for expunction under this bill. However, to the extent that some individuals could have a single conviction in multiple counties, this approximation would be an overestimate.

Revenues

Under this bill there would be a \$100 fee when filing a petition for expunction. AOC estimates that approximately one quarter of petitioners would be indigent and would thus not pay the fee when seeking expunction. Table 2 below outlines projected revenues if 75 percent of petitioners were to pay the \$100 fee.

Table 2: Estimated Revenues Resulting from \$100 Fee.

	FY 05-06	FY 06-07	FY 07-08	FY 08-09	FY 09-10
<i>Total Estimated Petitions</i>	795	550	305	305	305
<i>Non-Indigent Petitions (75%)</i>	596	413	229	229	229
Revenues	\$59,600	\$41,300	\$22,900	\$22,900	\$22,900

Expenditures

Judicial Branch

Petitions filed as a result of this bill would lead to additional workload and costs for superior court and the Administrative Office of the Courts.

Superior Court: Clerks would devote time to receiving, filing, and processing petitions, as well as destroying and otherwise expunging court files and records. Additionally, the petitioner would pay a \$100 fee when filing a petition, and clerks would incur time receiving and processing these payments or an affidavit of indigency if the petitioner is unable to pay. The petition must also be served on the district attorney, who would then have ten days to review and file an objection. Furthermore, the bill specifies that a hearing must be held and lists the findings that would justify expunction. Under current practice, most hearings are conducted in chambers or otherwise informally, and with rare exceptions, are uncontested. Nevertheless, expunction petitions due to this bill would require additional judge time to review affidavits and other documents, hear from the petitioner, make an evaluation, and issue an order. For cases that are contested or require closer scrutiny, significant judge time would be required.

Administrative Office of the Courts: To seek expunction under existing law, a person fills out an AOC form, which is sent to the SBI for a national record check and to the AOC to determine whether the person has previously had a record expunged. In 2004, AOC processed 6,297 of these requests. As under current law, this bill would require AOC to maintain a confidential file of expungements, but unlike some provisions of current law, this bill does not specify that a person may only seek an expungement once in their lifetime (see Technical Considerations). Handling current expunction petitions requires approximately one-half of a position in order to look up the information, handle related communications with the clerk and SBI, answer citizen questions, and maintain the files. Also, AOC would incur costs for programming, development, production of forms, postage, copying, printing, mailing, and similar operating costs.

Table 3 on the next page outlines the additional costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year. These figures represent additional resource costs for the Courts but, as they are formulated on fractional position estimates, do not represent the need for additional positions.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 795 Petitions		FY 06-07 550 Petitions		FY 07-08 to FY 09-10 305 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.20	\$6,766	0.14	\$4,736	0.08	\$2,706
Superior Court Judges	0.11	\$16,452	0.08	\$11,965	0.04	\$5,982
Assistant District Attorneys	0.11	\$8,597	0.08	\$6,252	0.04	\$3,126
AOC Staff	0.07	\$3,345	0.05	\$2,389	0.03	\$1,434
Operating Costs	-	\$1,590	-	\$1,100	-	\$610
Total		\$36,750		\$26,442		\$13,858

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in three ways:

1. The SBI reviews applications for expunction to determine whether the applicant is eligible, and transmits that information to the Court system.
2. Upon a judicial order for expunction, the SBI removes information from its databases and forwards the expunction order to the Federal Bureau of Investigation.
3. This analysis assumes that new subsection (f) in this bill would require that an offender's DNA profile also be removed from the Convicted Offender DNA Information System (CODIS). Beginning in December 2003, all convicted felons were required to provide a DNA sample.

The workload of seven different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, an attorney, an evidence technician, and a DNA database analyst. It requires a total of approximately 67 minutes of staff time to process an application, 172 minutes of staff time to process an expunction order, and 30 minutes of staff time to remove the DNA record from CODIS. The SBI estimates that 87 percent of applications result in expunction orders. Using data and methodology from the Administrative Office of the Courts, we estimate the following:

Table 4: Estimated SBI Position and Operating Expenditures

	<u>2005-06</u>	<u>2006-07</u>	<u>2007-08</u>
Number of applications	795	550	305
Number of orders (87%)	692	479	265
Cost per Application	\$27.79	\$27.79	\$27.79
Cost per Order	\$61.24	\$61.24	\$61.24
Postage per Order	\$1.27	\$1.27	\$1.27
Subtotal non-DNA Cost	\$65,455	\$45,284	\$25,112
DNA Cost per Order	\$22.20	\$22.20	\$22.20
Est. orders with DNA*	124	60	60
Subtotal DNA cost	\$15,376	\$3,600	\$3,600
TOTAL	\$80,831	\$48,884	\$28,712
Positions required	0.96	0.92	0.52

*Estimated number of eligible convictions that occurred on or after December 1, 2003.

The staff time required to process 795 applications is equivalent to one full-time position. Therefore, the box on the front page reflects one additional position required for the SBI in FY 2005-06. Position requirements will decrease in later years as workload declines.

SOURCES OF DATA: Administrative Office of the Courts, Department of Justice

TECHNICAL CONSIDERATIONS:

1. *Effective date:* This bill would be effective December 1, 2005. AOC notes that considerable preparation would be necessary to implement this bill, including hiring and training personnel, modifying computer programs, and coordination between AOC and the SBI to prepare for the anticipated increase in petitions. AOC expects that an effective date no earlier than January 1, 2006 would be necessary to implement the bill.

2. *Notice to Department of Correction and Division of Motor Vehicles:* The bill does not include the Department of Correction or Division of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. The mechanism by which DOC and DMV would receive notice of an expungement order is not specified.

3. *DNA Expungement:* It is unclear whether subsection (f) (which requires any other applicable State or local government agency to expunge from its records entries made as a result of the conviction to be expunged) would require that DNA profiles be removed from the Convicted Offender DNA Information System. This fiscal analysis assumes that this provision would require DNA to be expunged and Department of Justice costs are calculated accordingly.

4. *Fee for Expungement.* This bill sets a fee of \$100 for expungements resulting from this legislation. Currently, the fee for expungement is \$65. Senate Bill 622 (2005 Appropriations Act), which has passed the Senate and been referred to the House, would increase fees for expungements to \$125.

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DATE: May 19, 2005

Signed Copy Located in the NCGA Principal Clerk's Offices