

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1084 (Third 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:	\$56,500	\$39,100	\$21,600	\$21,600	\$21,600
EXPENDITURES:					
Judicial Branch	\$33,234	\$22,954	\$13,008	\$13,008	\$13,008
Justice	\$61,873	\$42,810	\$23,665	\$23,665	\$23,665
TOTAL					
EXPENDITURES:	\$95,107	\$65,764	\$36,673	\$36,673	\$36,673
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. In the second edition of this bill, a nonviolent felony was 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. The third edition also excludes Class F and G felonies from the definition of nonviolent felonies.

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. The third edition additionally requires that the offender must not have previously been granted an expunction. 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. The provisions in this bill expire in seven years (December 1, 2012).

Source: Adapted from 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 11,623 defendants eligible for expunction due to this bill.¹

As it would be unreasonable to assume that all 11,623 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 11,623 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, AOC estimates that an additional 700 new convictions would become eligible for expunction each year. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 56 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>	11,623	11,623	11,623	11,623	11,623
Percentage Seeking Expunction	6%	4%	2%	2%	2%
Petitions	697	465	232	232	232
<i>New Convictions</i>	700	700	700	700	700
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	56	56	56	56	56
Total Estimated Petitions	753	521	288	288	288

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>	753	521	288	288	288
<i>Non-Indigent Petitions (75%)</i>	565	391	216	216	216
Revenues	\$56,500	\$39,100	\$21,600	\$21,600	\$21,600

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. 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 05-06 753 Petitions		FY 06-07 521 Petitions		FY 07-08 to FY 09-10 288 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	0.18	\$6,089	0.12	\$4,059	0.07	\$2,368
Superior Court Judges	0.10	\$14,957	0.07	\$10,470	0.04	\$5,982
Assistant District Attorneys	0.10	\$7,815	0.07	\$5,471	0.04	\$3,126
AOC Staff	0.06	\$2,867	0.04	\$1,912	0.02	\$956
Operating Costs	-	\$1,506	-	\$1,042	-	\$576
Total		\$33,234		\$22,954		\$13,008

Department of Justice

The State Bureau of Investigation (SBI) in the Department of Justice is involved in the expunction process in two 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.

The workload of four different positions in the SBI is affected by this bill – two processing assistants, a fingerprint technician supervisor, and an attorney. It requires a total of approximately 67 minutes of staff time to process an application and 172 minutes of staff time to process an expunction order. 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	753	521	288
Number of orders (87%)	655	453	251
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
TOTAL	\$61,873	\$42,810	\$23,665
Positions required	1.25	0.86	0.48

The staff time required to process 753 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. *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) would increase fees for expungements to \$125. This fee change is identical in both the Senate and the House versions of the bill.

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Signed Copy Located in the NCGA Principal Clerk's Offices