

**GENERAL ASSEMBLY OF NORTH CAROLINA**

**Session 2017**

**Legislative Incarceration Fiscal Note**

**BILL NUMBER:** House Bill 621 (First Edition)

**SHORT TITLE:** Expungement Process Modifications.

**SPONSOR(S):** Representatives Faircloth, Stevens, McGrady, and Reives

<b>FISCAL IMPACT</b>					
(\$ in millions)					
<input type="checkbox"/> Yes <input type="checkbox"/> No <input checked="" type="checkbox"/> No Estimate Available					
	FY 2017-18	FY 2018-19	FY 2019-20	FY 2020-21	FY 2021-22
<b>State Impact</b>					
General Fund Revenues:					
General Fund Expenditures					
State Positions:					
<b>NET STATE IMPACT</b>	<b>Likely budget cost. See Assumptions &amp; Methodology section for additional details.</b>				
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>					
Department of Public Safety					
<b>EFFECTIVE DATE:</b> December 1, 2017					
<b>TECHNICAL CONSIDERATIONS:</b>					
None					

**BILL SUMMARY**

This bill amends the various expunction statutes (G.S. 15A-145, 15A-145.1, 15A-145.5, 15A-145.3, 15A-145.4, 15A-145.5, 15A-145.6). It provides that for any expunction entered on or after December 1, 2017, the expunged records for G.S. 15A-145 through 15A-145.6 may be used to calculate a prior record level if the person is convicted of a subsequent criminal offense.

**ASSUMPTIONS AND METHODOLOGY:**

This bill may have a fiscal impact on the prison population because of the expansion of prior record level calculations that could occur. However, it is not known how many expunctions would be affected, so no estimate of the potential cost is available. The NC Sentencing and Policy Advisory Commission has provided the following analysis of the bill.

## Estimated Prison Population Impact<sup>1</sup>

This bill impacts the calculation of prior record levels (PRL) by allowing certain expunged offenses to count towards the calculation of PRLs upon subsequent criminal convictions.

This bill creates G.S. 15A-151.5, Prosecutor access to expunged files. In subsection (b), the statute provides that for any expungement granted on or after December 1, 2017, criminal records expunged under subdivisions (1) through (7) of subsection (a) may be used to calculate PRL if the defendant is convicted of a subsequent criminal offense. For the purposes of this analysis, it is assumed that the language in proposed G.S. 15A-151.5(b) authorizing the use of expunged criminal records to calculate “*prior record level*” refers to calculation of PRL for felony sentencing purposes, and not prior conviction level, as used for misdemeanor sentencing purposes. (See Table 1 for PRLs associated with felony offenses.)

**Table 1: Prior Record Level and Points**

Prior Record Level					
PRL I 0-1 Pt	PRL II 2-5 Pts	PRL III 6-9 Pts	PRL IV 10-13 Pts	PRL V 14-17 Pts	PRL VI 18+ Pts

Note: For felony offenses committed on or after October 1, 2013.

Source: G.S. 15A-1340.14(c)

The types of offenses that can be expunged vary depending on the statute authorizing their expungement. As such, for each expunction provision covered under the proposal this analysis addresses the offenses that could be expunged under that particular statute that would then count for the calculation of the PRL upon a subsequent felony conviction; misdemeanor convictions that could be expunged but do not count for felony sentencing purposes (Class 2 and 3 misdemeanors) are not addressed.

Table 2, at the end of this document, provides data from the Administrative Office of the Courts for FY 2011-2016 regarding expunctions ordered by statute. These data do not distinguish between offense classes and therefore are not limited to offenses that count towards the calculation of a PRL for felony sentencing.

### **G.S. 15A-145. Expunction of records for first offenders under the age of 18 at the time of conviction of misdemeanor.**

Under this statute, expunctions of Class A1 and Class 1 misdemeanors would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant must be under 18 years of age at the time of conviction and must not have any prior felony or misdemeanor convictions other than a traffic violation. Because the defendant must have been a first time offender to qualify for expunction under this statute, it is likely that eligible defendants will be sentenced as a PRL I upon the subsequent conviction, because they would likely only have one point (from either the expunged Class A1 or Class 1 misdemeanor). Additionally, because the defendant can only qualify for the expunction two years after the date of the conviction or the completion of any period of probation, whichever occurs later, they would not be eligible for the extra point for being on probation at the time of the subsequent offense. (G.S. 15A-1340.14(b)(1)).

Under the proposed bill, impact will occur in moving from PRL I (0 to 1 point) to a higher PRL (2 points or more) due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. Based on the proposed G.S. 15A-151.5(b), little to no impact would be expected for

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<sup>1</sup> A threshold analysis is provided when it is not known how many offenders might be convicted and sentenced as a result of the proposed change. For each offense class, the threshold estimate is the number of convictions that results in the need for 1 prison bed the first year.

offenders with an expunction under G.S. 15A-145, since it is expected to only increase their PRL by 1 point – keeping the offender in the same PRL I. However, impact will occur if these offenders receive additional convictions in the future by placing them in a higher PRL due to the additional point for the expunged offense. In FY 2016, there were 147 expunctions ordered for offenders under the above statute (*see* Table 2: 15A-145, 15A-145(A)<sup>2</sup>). It is not known how many of these expunctions were for Class A1 and Class 1 misdemeanors and therefore would count towards the calculation of the PRL for defendants with subsequent felony convictions.

**G.S. 15A-145.1. Expunction of records for first offenders under the age of 18 at the time of conviction of certain gang offenses.**

Under this statute, expunctions of Class A1 and Class 1 misdemeanors, as well as Class H and I felonies, would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant must be under 18 years of age at the time of conviction and must not have any prior felony or misdemeanor convictions other than a traffic violation. Because the defendant must have been a first time offender to qualify for expunction under this statute, it is likely that defendants will be sentenced as a PRL I or PRL II for the purposes of the subsequent conviction, because they would likely only have one or two points (from the expunged Class A1 or Class 1 misdemeanor (one point) or Class H or I felony (two points)). Additionally, because the defendant can only qualify for the expunction two years after the date of the conviction or the completion of any period of probation, whichever occurs later, they would not be eligible for the extra point for being on probation at the time of the subsequent offense. (G.S. 15A-1340.14(b)(1)).

Under the proposed bill, impact will occur in moving from PRL I (0 to 1 point) to a higher PRL (2 points or more) due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. Based on the proposed G.S. 15A-151.5(b), impact will occur for these offenders with an expunction under G.S. 15A-145.1 due to the increase from PRL I to PRL II for those offenders who receive 2 points. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there were no expunctions ordered for offenders under the above statute (*see* Table 2: 15A-145.1).

**G.S. 15A-145.2(a). Expunction of records for first offenders not over 21 years of age at the time of offense of certain drug offenses.**

Under this statute, expunctions of Class 1 misdemeanors and Class I felonies that were discharged pursuant to G.S. 90-96(a)(1) would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant cannot be over 21 years of age at the time of offense and must not have any prior felony convictions or any substance related misdemeanor convictions; the defendant could have other prior convictions for Class A1 or Class 1 misdemeanors that could impact their PRL for the purposes of the subsequent conviction. It is not known how adding an additional point from the expunged Class 1 misdemeanor or an additional two points from the expunged Class I felony would impact the PRL because the defendant could have a number of other misdemeanor convictions that would be used to calculate their PRL.

Under the proposed bill, impact will occur in moving from a lower PRL to a higher PRL due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. For offenders with an expunction under G.S. 15A-145.2(a), their “starting” PRL is unknown since other misdemeanor convictions may be available for point calculation; however, impact will occur for these offenders due to the increase in PRL. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there were 36 expunctions ordered under the above statute (*see*

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<sup>2</sup> Because G.S. 15A-145(d1) was repealed in 2012, it is not included here.

Table 2: 15A-145.2<sup>3</sup>, 15A-145.2(A), 90-96(B)). It is not known how many of these expunctions were for Class 1 misdemeanors and Class I felonies and therefore would count towards the calculation of the PRL for defendants with subsequent felony convictions.

**G.S. 15A-145.2(c). Expunction of records for first offenders not over 21 years of age at the time of offense of certain drug offenses.**

Under this statute, expunctions of Class 1 misdemeanors and Class I felonies that were ordered cancelled and expunged pursuant to this statute would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant cannot be over 21 years of age at the time of offense and must not have any prior felony convictions or any substance related misdemeanor convictions; the defendant could have other prior convictions for Class A1 or Class 1 misdemeanors that could impact their PRL for the purposes of the subsequent conviction. It is not known how adding an additional point from the expunged Class 1 misdemeanor or an additional two points from the expunged Class I felony would impact the PRL because the defendant could have a number of other misdemeanor convictions that would be used to calculate their PRL.

Under the proposed bill, impact will occur in moving from a lower PRL to a higher PRL due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. For offenders with an expunction under G.S. 15A-145.2(c), their “starting” PRL is unknown since other misdemeanor convictions may be available for point calculation; however, impact will occur for these offenders due to the increase in PRL. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there were 41 expunctions ordered for offenders under the above statute (*see* Table 2: 15A-145.2<sup>4</sup>, 15A-145.2(C), 90-96(E)). It is not known how many of these expunctions were for Class 1 misdemeanors and Class I felonies and therefore would count towards the calculation of the PRL for defendants with subsequent felony convictions.

**G.S. 15A-145.3(a). Expunction of records for first offenders not over 21 years of age at the time of offense of certain toxic vapor offenses.**

Under this statute, expunctions of Class 1 misdemeanors that were discharged pursuant to G.S. 90-113.14 would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant cannot be over 21 years of age at the time of offense and must not have any prior convictions under the North Carolina Toxic Vapors Act, the North Carolina Controlled Substances Act, paraphernalia related to substances controlled under the Controlled Substances Act or any other state or federal statute relating to the substances covered in the Controlled Substances Act; the defendant could have other convictions for any class of misdemeanor or felony that could impact their PRL for the purposes of the subsequent conviction. It is not known how adding an additional point from the expunged Class 1 misdemeanor would impact the PRL because the defendant could have a number of other convictions that would be used to calculate their PRL.

Under the proposed bill, impact will occur in moving from a lower PRL to a higher PRL due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. For offenders with an expunction under G.S. 15A-145.3(a), their “starting” PRL is unknown since other felony or misdemeanor convictions may be available for point calculation; however, impact will occur for these offenders due to the increase in PRL. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there were 2 expunctions ordered for offenders under the above statute (*see* Table 2: 15A-145.3<sup>5</sup>, 15A-145.3(A)). It is not known how many of these expunctions were for

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<sup>3</sup> AOC does not indicate whether the expunctions were under subsection (a) or (c).

<sup>4</sup> AOC does not indicate whether the expunctions were under subsection (a) or (c).

<sup>5</sup> AOC does not indicate whether the expunctions were under subsection (a) or (c).

Class 1 misdemeanors and therefore would count towards the calculation of the PRL for defendants with subsequent felony convictions.

**G.S. 15A-145.3(c). Expunction of records for first offenders not over 21 years of age at the time of offense of certain toxic vapor offenses.**

Under this statute, expunctions of Class 1 misdemeanors that were ordered cancelled and expunged pursuant to this statute would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant cannot be over 21 years of age at the time of offense and must not have any prior convictions under the North Carolina Toxic Vapors Act, the North Carolina Controlled Substances Act, paraphernalia related to substances controlled under the Controlled Substances Act or any other state or federal statute relating to the substances covered in the Controlled Substances Act; the defendant could have other convictions for any class of misdemeanor or felony that could impact their PRL for the purposes of the subsequent conviction. It is not known how adding an additional point from the expunged Class 1 misdemeanor would impact the PRL because the defendant could have a number of other convictions that would be used to calculate their PRL.

Under the proposed bill, impact will occur in moving from a lower PRL to a higher PRL due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. For offenders with an expunction under G.S. 15A-145.3(c), their “starting” PRL is unknown since other felony or misdemeanor convictions may be available for point calculation; however, impact will occur for these offenders due to the increase in PRL. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there were 3 expunctions ordered for offenders under the above statute (*see* Table 2: 15A-145.3<sup>6</sup>, 15A-145.3(C)). It is not known how many of these expunctions were for Class 1 misdemeanors and therefore would count towards the calculation of the PRL for defendants with subsequent felony convictions.

**G.S. 15A-145.4. Expunction of records for first offenders who are under 18 years of age at the time of the commission of a nonviolent felony.**

Under this statute, expunctions of Class H and I felonies that do not meet the criteria listed in subsection (a) would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant must be under 18 years of age at the time of offense and must not have any prior convictions other than a traffic violation. Because the defendant must have been a first time offender to qualify for expunction under this statute, it is likely that defendants will be sentenced as a PRL II for the purposes of the subsequent conviction, because they would likely only have two points (from the expunged Class H or I felony). Additionally, if the defendant was convicted of more than one nonviolent felony offense in a single superior court calendar week or a single session of superior court, and had those multiple convictions expunged under this statute, only the most serious conviction would be counted, still either a Class H or I felony. G.S. 15A-1340.14(d)

Under the proposed bill, impact will occur in moving from PRL I (0 to 1 point) to a higher PRL (2 points or more) due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. Based on the proposed G.S. 15A-151.5(b), impact will occur for these offenders with an expunction under G.S. 15A-145.4 due to the increase from PRL I to PRL II for those offenders who receive 2 points. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there were 16 expunctions ordered for offenders under the above statute (*see* Table 2: 15A-145.4). Because all of the expunctions ordered under this statute must be for felonies, and all felonies count towards the calculation of the PRL, all 16 of these expunction orders would count towards the calculation of PRL for defendants with subsequent felony convictions.

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<sup>6</sup> AOC does not indicate whether the expunctions were under subsection (a) or (c).

**G.S. 15A-145.5. Expunction of certain misdemeanors and felonies; no age limitation.**

Under this statute, expunctions of nonviolent<sup>7</sup> Class A1 and Class 1 misdemeanors, as well as nonviolent<sup>8</sup> Class H and I felonies, would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant must not have any prior felony or misdemeanor convictions other than a traffic violation. Because the defendant must not have any other convictions that would count towards PRL calculation to qualify for expunction under this statute, it is likely that defendants will be sentenced as a PRL I or PRL II for the purposes of the subsequent conviction, because they would likely only have one or two points (from the expunged Class A1 or Class 1 misdemeanor (one point) or Class H or I felony (two points)). Additionally, if the defendant was convicted of more than one nonviolent felony or nonviolent misdemeanor in the same session of court, and would otherwise qualify under G.S. 15A-145.5(b), the multiple convictions shall be treated as one for the purposes of expungement.

Under the proposed bill, impact will occur in moving from PRL I (0 to 1 point) to a higher PRL (2 points or more) due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. Based on the proposed G.S. 15A-151.5(b), impact will occur for these offenders with an expunction under G.S. 15A-145.5 due to the increase from PRL I to PRL II for those offenders who receive 2 points. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there were 411 expunctions ordered for offenders under the above statute (*see* Table 2: 15A-145.5). It is not known how many of these expunctions were for Class A1 and Class 1 misdemeanors or H and I felonies and therefore would count towards the calculation of the PRL for defendants with subsequent felony convictions.

**G.S. 15A-145.6. Expunction of certain defendants convicted of prostitution.**

Under this statute, expunctions of Class 1 misdemeanors would count towards the calculation of the PRL for defendants with subsequent felony convictions. To qualify for expunction under this statute, the defendant must meet one of the criteria outlined in 15A-145.6(b) and cannot have been convicted of any violent<sup>9</sup> felony or misdemeanor; the defendant could have other convictions for any class of misdemeanor or felony that could impact their PRL for the purposes of the subsequent conviction. It is not known how adding an additional point from the expunged Class 1 misdemeanor would impact the PRL because the defendant could have a number of other convictions that would be used to calculate their PRL.

Under the proposed bill, impact will occur in moving from a lower PRL to a higher PRL due to the increase in active sentences imposed and the longer average estimated time served at each increase in PRL. For offenders with an expunction under G.S. 15A-145.6, their “starting” PRL is unknown since other felony or misdemeanor convictions may be available for point calculation; however, impact will occur for these offenders due to the increase in PRL. In addition, PRL may continue to be affected by the proposed change for any future convictions. In FY 2016, there was 1 expunction ordered for an offender under the above statute (*see* Table 2: 15A-145.6). Because all of the expunctions ordered under this statute are Class 1 misdemeanors, this 1 expunction order would count towards the calculation of the PRL for the defendant for subsequent felony convictions.

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<sup>7</sup> Nonviolent as defined by G.S. 15A-145.5(a).

<sup>8</sup> Nonviolent as defined by G.S. 15A-145.5(a).

<sup>9</sup> As defined by G.S. 15A-145.6(a)(2).

**Table 2: Expunction Orders for FY 2011-12 through FY 2015-16**

<b>Statute</b>	<b>FY 2011-12</b>	<b>FY 2012-13</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>	<b>Total</b>
7B-3200	3	0	2	2	0	7
15A-145	6	17	8	7	2	38
15A-145(A)	144	146	175	128	145	593
15A-145(D1)	15	16	7	0	0	38
15A-145.1	1	1	1	0	0	3
15A-145.2	0	0	8	4	4	12
15A-145.2(A)	23	34	47	33	32	137
15A-145.2(B)	13	14	22	11	27	60
15A-145.2(C)	26	30	42	22	37	120
15A-145.3	0	0	1	2	1	3
15A-145.3(A)	0	0	3	1	1	4
15A-145.3(B)	6	7	4	5	12	22
15A-145.3(C)	1	0	1	2	2	4
15A-145.4	4	15	21	13	16	53
15A-145.5	0	6	311	292	411	609
15A-145.6	0	0	0	1	1	1
15A-146	8,990	10,006	12,886	7,407	9,929	39,289
15A-147	69	66	60	42	412	237
15A-149	0	0	2	0	0	2
90-96(B)	0	1	1	0	0	2
90-96(D)	0	0	1	0	0	1
90-96(E)	0	0	0	0	0	0
90-113.14(E)	0	0	0	0	0	0
<b>Total</b>	<b>9,301</b>	<b>10,359</b>	<b>13,603</b>	<b>7,972</b>	<b>11,032</b>	<b>41,235</b>

Source: NC Administrative Office of the Courts

**SOURCES OF DATA:** Administrative Office of the Courts; North Carolina Sentencing and Policy Advisory Commission.

**TECHNICAL CONSIDERATIONS:** None

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**DATE:** April 27, 2017



**Signed Copy Located in the NCGA Principal Clerk's Offices**