

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: House Bill 1084 (Fourth 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:	\$56,300	\$38,900	\$21,500	\$21,500	\$21,500
EXPENDITURES:					
Judicial Branch	\$41,827	\$28,421	\$16,130	\$16,130	\$16,130
Justice	\$61,709	\$42,646	\$23,500	\$23,500	\$23,500
TOTAL					
EXPENDITURES:	\$103,536	\$71,067	\$39,630	\$39,630	\$39,630
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 and subsequent editions also exclude Class F and G felonies from the definition of nonviolent felonies, and the fourth edition prohibits the expungement of Chapter 90 drug offenses involving methamphetamine.

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 and subsequent editions additionally require that the offender must not have previously been granted an expunction, and the fourth edition requires that the petitioner possess or be seeking to obtain a high school diploma or equivalent. 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

AOC data identified no eligible defendants convicted of a Chapter 90 drug-related offense involving methamphetamine for which a specific offense code exists. There are certain Chapter 90 drug offenses for which the offense code does not identify the drug involved. As such, there may be some convictions under Chapter 90 involving methamphetamine that would be eligible for expunction that could not be identified in AOC data.

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 675² new convictions would become eligible for expunction each year. Of these, AOC estimates that 8 percent would seek expunction, resulting in an additional 54 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>	675	675	675	675	675
Percentage Seeking Expunction	8%	8%	8%	8%	8%
Petitions	54	54	54	54	54
Total Estimated Petitions	751	519	286	286	286

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.

² Amended from 700 in the third edition fiscal note based on corrected data from AOC.

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>	751	519	286	286	286
<i>Non-Indigent Petitions (75%)</i>	563	389	215	215	215
Revenues	\$56,300	\$38,900	\$21,500	\$21,500	\$21,500

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. The fourth edition of the bill additionally requires the district attorney to make his or her best efforts to notify the victim, if any, of the expunction request. As such, workload estimates were revised to include an additional fifteen minutes, on average, of prosecutor time per expunction petition.

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 below 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 05-06 751 Petitions		FY 06-07 519 Petitions		FY 07-08 to FY 09-10 286 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	0.21	\$16,412	0.14	\$10,942	0.08	\$6,252
AOC Staff	0.06	\$2,867	0.04	\$1,912	0.02	\$956
Operating Costs	-	\$1,502	-	\$1,038	-	\$572
Total		\$41,827		\$28,421		\$16,130

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	751	519	286
Number of orders (87%)	653	452	249
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	\$61,709	\$42,646	\$23,500
Positions required	1.25	0.86	0.47

The staff time required to process 751 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