

GENERAL ASSEMBLY OF NORTH CAROLINA

Session 2005

Legislative Fiscal Note

BILL NUMBER: Senate Bill 559 (Second Edition)

SHORT TITLE: Expunction/Convictions of Nonviolent Crimes.

SPONSOR(S): Senator Kinnaird

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:						
Judicial Branch		\$2,721,750	\$1,918,000	\$1,114,250	\$1,114,250	\$1,114,250
Justice		\$2,721,750	\$1,918,000	\$1,114,250	\$1,114,250	\$1,114,250
EXPENDITURES:						
Judicial Branch (R)		\$2,110,253	\$2,110,253	\$2,110,253	\$1,298,131	\$1,298,131
	(NR)	\$ 201,057				
Justice (R)		\$4,707,845	\$4,707,845	\$4,707,845	\$2,737,443	\$2,737,443
	(NR)	\$ 374,000				
TOTAL						
EXPENDITURES:		\$7,393,155	\$6,818,098	\$6,818,098	\$4,035,574	\$4,035,574
POSITIONS	AOC	31	31	31	18	18
(cumulative):	DOJ	85	85	85	49	49
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch (AOC); Department of Justice						
EFFECTIVE DATE: December 1, 2005						

BILL SUMMARY: The second edition of this bill would enact new G.S. 15A-149 to allow one-time expunction of records for offenders with a single conviction for a nonviolent criminal offense. A nonviolent criminal offense is defined as any misdemeanor or Class H or I felony except an offense with assault as an essential element of the offense, an offense for which the offender must register as a sex offender, an offense for which possession or use of a firearm is an essential element of the offense, offenses for which the offender was armed, and trafficking offenses.

To be eligible for expunction under the bill, the offender must have only one conviction for any felony or misdemeanor other than a traffic violation and must wait to file a petition until ten years

after the date of the conviction, period of active sentence, probation, or post-release supervision, whichever occurs later.

Sections two through six of the bill, added in the second edition, modify existing expungement provisions to conform to current practice.

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, AOC identified the number of defendants convicted of a single nonviolent criminal offense as defined in the bill at least ten years in the past by counting the number of such convictions recorded per defendant’s name in each county. Using this method, AOC identified 2,143,349 defendants eligible for expunction under this bill.¹

As it would be unreasonable to assume that all eligible individuals would petition for expunction, AOC estimated the percentage of this total that would file a petition by utilizing the petition rate for an existing expunction provision under G.S. 15A-145(a), which allows for expunction of non-traffic misdemeanors committed by offenders under the age of 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 2,143,349 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 207,000 convictions would become eligible for expunction. Of these, AOC estimates that 4 percent would seek expunction, resulting in an additional 8,280 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>	2,143,349	2,143,349	2,143,349	2,143,349	2,143,349
Percentage Seeking Expunction	3%	2%	1%	1%	1%
Petitions	64,300	42,867	21,433	21,433	21,433
<i>New Convictions</i>	207,000	207,000	207,000	207,000	207,000
Percentage Seeking Expunction	4%	4%	4%	4%	4%
Petitions	8,280	8,280	8,280	8,280	8,280
Total Estimated Petitions	72,580	51,147	29,713	29,713	29,713

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. One half of the fee revenue would be remitted to the Department of Justice, and the remaining half would be retained by the court system.

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>	72,580	51,147	29,713	29,713	29,713
<i>Non-Indigent Petitions (75%)</i>	54,435	38,360	22,285	22,285	22,285
Revenues	\$5,443,500	\$3,836,000	\$2,228,500	\$2,228,500	\$2,228,500

Expenditures

Judicial Branch

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

District and 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 consisting of the names of individuals who have received an expunction to ensure that no person is granted multiple expunctions. 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. The additional expunction requests that would be filed under this bill would require additional AOC staff. 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 staff and operating costs that would be needed to process the estimated number of expunction petitions resulting from this bill each year.

Table 3: Estimated Judiciary Position and Operating Expenditures

	FY 05-06 72,580 Petitions		FY 06-07 51,147 Petitions		FY 07-08 to FY 09-10 29,713 Petitions		Average 51,147 Petitions	
	Positions	Cost	Positions	Cost	Positions	Cost	Positions	Cost
Deputy Clerks	18	\$608,904	13	\$439,764	7	\$236,796	13	\$439,764
Superior Court Judges	1	\$149,567	0.7	\$104,697	0.4	\$59,827	0.7	\$104,697
District Court Judges	9	\$1,133,208	6	\$755,472	4	\$503,648	6	\$755,472
Assist. District Attorneys	10	\$781,540	7	\$547,078	4	\$312,616	7	\$547,078
AOC Staff	6	\$286,734	4	\$191,156	3	\$143,367	4	\$191,156
Operating Costs	-	\$102,294	-	\$72,086	-	\$41,877	-	\$72,086
Total	44	\$3,062,247	31	\$2,110,253	18	\$1,298,131	31	\$2,110,253

To process 72,580 petitions in the first year, AOC estimates that 44 full-time positions would be needed. As described in the Department of Justice section on page 4, the Courts could alternatively process 51,000 petitions in each of the first three years, necessitating fewer positions in 2005-06. As such, the box on the front page reflects 31 additional positions necessary to process 51,000 expunctions each year. As workload declines by FY 2009-10, the position requirements would decrease. The additional positions needed to process the expunction petitions would also entail one-time equipment costs at an average total of \$4,961 per position and one-time programming costs of \$47,266. These costs are added to the front-page box for FY 2005-06.

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. Expunction of DNA samples and records. It is unclear whether this bill would require expunction of DNA records (see Technical Considerations). This analysis assumes that new G.S. 15A-149 (e) 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. Due to the 10-year timeframe in this bill, beginning in 2013 nonviolent felons could be eligible to have DNA records expunged under this bill. These costs are outside of the five-year fiscal note timeframe and therefore are not included in the front page box.

The workload of six 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 and 172 minutes of staff time to process an expunction order, and an additional 30 minutes of staff time to expunge DNA records. 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>	<u>Average</u>
Number of applications	72,580	51,147	29,713	51,147
Number of orders (87%)	63,145	44,498	25,850	44,498
Cost per Application	\$27.79	\$27.79	\$27.79	\$27.79
Cost per Order	\$61.24	\$61.24	\$61.24	\$61.24
Postage per Order	\$1.27	\$1.27	\$1.27	\$1.27
Subtotal non-DNA Cost	\$5,964,192	\$4,202,945	\$2,441,607	\$4,202,945
DNA Cost per Order	\$22.20	\$22.20	\$22.20	\$22.20
Est. orders with DNA*	0	0	0	0
Subtotal DNA cost	\$ -	\$ -	\$ -	\$ -
TOTAL	\$5,964,192	\$4,202,945	\$2,441,607	\$4,202,945
Positions required	120	85	49	85

The staff time required to process 72,580 applications is equivalent to 120 full-time positions. However, this assumes that the SBI will process all outstanding expungement requests in FY 2005-06. Alternatively, the SBI could process fewer applications in the first year with fewer positions. Rather than processing 73,000 applications in the first year, 51,000 in the second year, and 30,000 in the third year, the SBI could process 51,000 applications and orders each year. Using this approach, the box on the front page reflects 85 additional positions required for the SBI to process 51,000 expungements each year. After FY 2009-10, position requirements will decrease as workload declines. This approach assumes a longer turnaround time for some expungements in the first two years.

In addition to the costs listed in the table on the previous page, there would be one-time costs for computers and office furniture for the 85 positions required, at a total of \$4,400 per position. Finally, due to the large number of new positions required, the Department of Justice would also need additional space to house these positions. The Department estimates 330 square feet per position, at a cost of \$18 per square foot, for a total of \$504,900. These costs are included in the box on the front page.

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 Department of Motor Vehicles:* The bill does not include the Department of Correction or Department of Motor Vehicles among the agencies to whom the Clerk must send a certified copy of an expungement order. Consideration might be given to having a petition specify whether probation or other DOC supervision was involved, or DMV conviction records are implicated (which could be the case for an expungement of a traffic misdemeanor), and if so, providing for some mechanism by which DOC and DMV receive notice of and are required to expunge their records of convictions.

3. *DNA Expungement:* It is unclear whether G.S. 15A-149(e)—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. However, only those nonviolent felons convicted of crimes committed after December 1, 2003 would have provided DNA samples; these offenders would not be eligible for expungement until 2013 or later.

4. *Fee for Expungement.* This bill sets a fee of \$100 for expungements resulting from this legislation, and allocates revenues equally to the Judicial Branch and the Department of Justice. Currently, the fee for expungement is \$65 and is remitted to the State General Fund. 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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Signed Copy Located in the NCGA Principal Clerk's Offices