

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 898 (Second Edition)

SHORT TITLE: Expunge Nonviolent Felony/Youthful Offender.

SPONSOR(S): Representatives Bordsen, Crawford, Hall, and Jones

	FISCAL IMPACT				
	Yes (X)	No ( )	No Estimate Available ( )		
	<u>FY 2007-08</u>	<u>FY 2008-09</u>	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>
<b>REVENUES</b>					
General Fund	Fiscal Impact Cannot be Determined, See Assumptions and Methodology Section				
<b>EXPENDITURES</b>					
Judicial					
Justice					
Correction	Fiscal Impact cannot be Determined, See Assumptions and Methodology Section				
<b>POSITIONS (cumulative):</b>					
Judicial					
Justice					
Correction					
<b>PRINCIPAL DEPARTMENT(S) &amp; PROGRAM(S) AFFECTED:</b>	Administrative Office of the Courts; Correction; Justice				
<b>EFFECTIVE DATE:</b>	Act becomes effective December 1, 2007 and expires December 1, 2014				

**BILL SUMMARY:** Enacts new GS 15A-150 to create procedures and criteria for the expunction of a nonviolent felony conviction from the record of an offender who was under 18 years of age and had no other felony or misdemeanor convictions (except for traffic violations) at the time of the conviction. Defines nonviolent felony as any felony except (1) a Class A through Class G felony, (2) a felony that includes assault as an essential element of the offense, (3) a felony that is an offense for which the convicted offender must register as a sex offender, and (4) a felony involving methamphetamines charged under GS Chapter 90. Provides that multiple nonviolent felony convictions in the same session of court are treated as one nonviolent felony conviction. Directs that a petition for expunction 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. Requires the offender to perform at least 100 hours of community

service before filing a petition. Specifies the content of the petition, requires service upon the district attorney of the court where the conviction was obtained, and permits the district attorney to file objections within 30 days after service. Requires the court to order expunction of the record and restore the offender to his or her pre-conviction status if the offender has been free of a felony or misdemeanor conviction (other than traffic conviction) from the date of the conviction in question and has no outstanding restitution orders or civil judgments for restitution. Requirement for expunction of the record does not apply to DNA records and samples from the State DNA database. Requires the Administrative Office of the Courts to maintain a file of the names of persons granted a discharge under the statute that may be disclosed only to judges of the General Court of Justice for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge. Directs that any person eligible for expunction of a record receive notice of the person's eligibility. Provides that a person filing a petition for expunction pay a fee of \$125 unless the individual is indigent. Provides that individuals seeking certification under GS Chapter 17C (NC Criminal Justice Education and Training Commission [CJET Commission]) or GS Chapter 17E (NC Sheriffs' Education and Training Standards Commission [SETS Commission]) must disclose any and all felony convictions to the certifying commission including nonviolent felony convictions expunged under this act. Provides that persons required by law to conduct a criminal background check on a prospective employee are deemed not to have knowledge of any convictions expunged under the act. Directs that the confidential files maintained by the AOC may be disclosed to a limited list that includes state and local law enforcement agencies for employment purposes only, court judges under specified circumstances, and CJET and SETS commissions defined in GS Chapters 17C and 17E.

Effective December 1, 2007, and expires December 1, 2014.

#### **ASSUMPTIONS AND METHODOLOGY:**

HB 898 bill would primarily affect three (3) state agencies: Judicial; Correction; and Justice. The bill establishes criteria by which a person convicted of a non-violent felony committed while under age 18, may petition the courts to have the criminal record expunged. The person must pay a filing fee of \$125, which shall be deposited in the General Fund. Indigent persons would not have to pay the filing fee.

#### **Judicial Department**

Staff of the Administrative Office of the Courts (AOC) analyzed HB 898 to determine the potential impact on the Judicial Department. They identified four (4) major areas that would be affected:

- **Clerks of Superior Court:** In addition to the routine duties associated with any case, Clerks report to AOC the names of persons granted an expunction and forward a certified copy of the expunction order to the sheriff or other arresting agency. Clerks would also destroy records after expunction orders are entered. In addition, some and *potentially many inquiries* will be made of clerks from potential petitioners where no subsequent petition is ever formally filed. Additional workload would arise if clerks must verify information contained in a petition. Clerks would also receive and process affidavits from persons who claim indigency and request to be waived from paying the \$125 filing fee.

- **Judges:** Although most Class H and I felonies are disposed in superior court, district court judges may accept guilty pleas in these cases, so petitions would be filed in both district and superior court. Currently, expunction hearings are relatively informal, and with rare exceptions uncontested. AOC anticipates that the expunction hearings under the proposed bill would be similar. However, court time would be required in every case to review affidavits and other documents, hear from the petitioner, make an evaluation and issue an order. In addition, under new subparagraph G.S. 15A-150(j), a person "eligible for expunction . . . under this section" must be notified about the provisions of the section by the probation officer, if one is assigned, or else by the court "at the time of the conviction of the felony which is to be expunged." AOC staff indicated that *this could have significant workload implications for the court in all Class H and I felony cases involving young offenders.*
- **District Attorneys (DA):** the petition must be served on the District Attorney (presumably by the petitioner). The DA is required to contact victims and is given 30 days to file any objection. DAs would have to allocate staff and other resources to review petitions, check files, notify victims, and, in some cases, make and argue objections.
- **Administrative Office of the Courts (AOC):** The bill would require AOC to search its confidential records to ensure that a petitioner has not previously had an expunction and to then maintain a confidential file of expunctions granted. For expunction requests under existing law, AOC queries its confidential database of prior expunction and maintains a confidential file of new expungements ordered. In 2006, AOC received more than 7,000 expunction requests and processed around 6,600 new orders, using approximately 1.2 fte's for this work. AOC anticipates that HB 898 would increase the volume of expunction requests, thereby requiring additional AOC staff. AOC would also incur costs for programming, development and production of forms; postage; copying, and other operating costs. Sections 2 and 3 of the bill amend G.S. 17C-13 and 17E-12 to make information from AOC's confidential file available to the Criminal Justice and the Sheriff's Education and Training Standards Commissions who may consider revocations or other actions relating to certifications of state and local criminal justice officers. AOC's would also have to respond to information requests submitted under the exceptions to the confidentiality of the AOC's records of expunctions.

To develop an estimate of HB 898's fiscal impact, AOC staff first projected the number of persons eligible to petition for expunctions beginning in December 2007. It is assumed that the numbers will be much higher in the first two years due to the backlog of persons with past felony convictions who would be immediately eligible to petition for an expunction when the bill becomes effective in December 2007 or could become so by completing the 100 hours of community service. AOC estimates this number to be about 8,500 persons. However, because there is no available data to use to project the number persons who would file a petition for expunction, AOC provided a range of costs associated with this potentially eligible population.

The other potentially eligible population would be the pool of persons newly convicted in future years who would become eligible after two (2) years to petition for expunction. Based on the number of current petitioners for expunction of non-traffic misdemeanor convictions, AOC estimates this group would be about 400 persons annually. In calendar 2004, there were 244 requests for expungement under G.S. 15A-145(a) (i), which is limited to expunction of non-traffic misdemeanors committed by offenders under age 18. AOC data indicated that, in a given year, around 6,900 convictions become eligible to have their records expunged under Subsection G.S. 15A-145(a) (i). The ratio of people who sought expunction, 244, compared to the 6,900 newly eligible convictions is about 4%. In deriving an estimate of the number of potential petitioners, AOC assumed that one-third would be in-eligible because they do not meet the educational criteria, e.g. high school diploma or G.E.D. That assumption is based upon Department of Public

Instruction (DPI) data on the North Carolina high school dropout rate. However, there was no data available on which to make an assumption about those persons who would be ineligible because they failed to meet the “good moral character” or community service requirements.

	How long ago the conviction occurred				TOTAL
	< 1 year	1 year	2 years	> 2 years	
<b>1. Eligible people, AOC data:</b> <b>(a) gross number:</b> people under age 18 with one H or I felony conviction, and no other convictions ever (other than traffic offenses), excluding assault, sex registration and methamphetamine offenses	798	654	544	12,484	14,480
<b>2. Exclusions, estimated percentage of total</b>					
(a) did not perform 100 hours of community service					
(b) did not pay restitution that was ordered (if any)					
(c) no high school diploma or GED	32%	32%	32%	32%	
<b>Total % estimated exclusions:</b>	32%	32%	32%	32%	
<b>TOTAL: (1) - (2) = estimated total eligible offenders</b>	543	445	370	<b>8,489</b>	9,847

Assuming that only 10 percent of eligible persons petition for an expunction, AOC estimates that about 900 petitions would be filed in the first year. This figure includes persons convicted prior to December 2005 and persons will become newly eligible during the period December 1, 2007 through June 30, 2008. *AOC staff caution that the proportion of eligible persons who would seek expunction under HB 898 would be expected to be considerably higher, given the more serious consequences of having a felony record.* Thus, the incentive to seek an expungement would be far greater. At the high end of the range, it is assumed that about 2,700, thirty-percent, eligible persons could file petitions in FY 2007-08. Given these factors, AOC staff estimate total first-year Judicial costs would be in the range of \$115,000 to \$500,000. The higher estimate assumes the need for an additional Superior Court Judge, Deputy Clerk, Assistant District Attorney, and Court Reporter, and an administrative staff position within AOC. HB 898 requires that the court give notice about the right to expunction at the time of conviction. Thus, as a practical matter, the court would be obliged to provide notice to nearly all youthful offenders convicted of nonviolent felonies, increasing the court time for all such cases. Costs in subsequent years would be expected to decrease based on the assumption that most of the eligible persons convicted prior to 2005 would petition the court in the first two years. Beginning in the third year, it is likely that only about 400 persons, those newly eligible, would seek an expungement.

HB 898 establishes a \$125 filing fee for expungement petitions. AOC estimates that 50 percent of petitioners will be indigent and therefore will not pay the filing fee. Thus, revenue to the General Fund from the filing fee could range from \$56,000 to \$170,000.

### **Department of Correction**

The proposed bill includes new Section 15A-150(d)(1) which permits the court to request that a probation officer conduct an additional investigation or verification of the petitioner's conduct during the 2-year waiting period. The bill would also require probation officers to notify persons assigned to them of their eligibility for expunction. Staff at the Department of Correction (DOC) estimated that SB677's cost would range from \$230,000 to \$690,000 in the first year. The lower estimate assumes that 900, approximately ten (10) percent, of the persons who would meet the eligibility criteria on or between December 1, 2007 and June 30, 2008 would petition for an expunction. DOC staff estimates that probation officers, on average, would spend about 8 hours completing and reporting to the court the results of the investigation of the petitioner's conduct during the prior two-year period. The probation officers would perform this work on an over-time basis. Therefore, DOC would not have to add additional staff to fulfill the additional requirements of SB677. The \$690,000 estimate is based on the assumption that about 30 percent of eligible persons would petition in the first year. Costs in the subsequent years would be expected to decrease based on the assumption that most of the eligible persons convicted prior to 2005 would petition the court in the first two years. Beginning in the third year, it is likely that only about 400 persons, those newly eligible, would seek an expungement.

### **Department of Justice**

HB 898 directs the Sheriffs or arresting agency to forward expungement notices to the State Bureau of Investigation (SBI) and directs the SBI to forward the notice to the Federal Bureau of Investigation (FBI). The Department of Justice receives expungement orders from the courts and performs the actual expungement from the SBI criminal records database in addition to forwarding the orders to the Federal Bureau of Investigation (FBI). DOJ staff estimate that up to one additional processing assistant position would be needed to process the increased expungement orders generated by HB 898. The annual salary and benefit cost for such a position is \$45,810. In addition, DOJ incurs \$1.67 in supply and postage costs for each expungement order processed.

**SOURCES OF DATA:** Administrative Office of the Courts; Department of Correction; Department of Justice

**TECHNICAL CONSIDERATIONS:** H898 specifies that AOC shall maintain a confidential file containing the names of persons granted expunctions and that the information contained shall be disclosed only to certain law enforcement agencies relating to certifications of officers, and to judges "for the purpose of ascertaining whether any person charged with an offense has been previously granted a discharge." A similar provision in current law is interpreted and applied only when a person requests an expungement, to ensure that no prior expunction was ever granted. If or to the extent that this provision were construed to allow requests for information from the confidential file whenever a defendant is charged with an offense, or for sentencing a defendant, the time and expense for the AOC to handle such requests would significantly increase the estimated cost.

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