

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2007

Legislative Fiscal Note

BILL NUMBER: House Bill 1787 (First Edition)

SHORT TITLE: Expunction Info/Dismissal or Not Guilty.

SPONSOR(S): Representatives Adams, Johnson, Glazier, 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>
REVENUES					
EXPENDITURES	\$575,344	\$870,520	\$870,520	\$870,520	\$870,520
POSITIONS (cumulative):	10.0	10.0	10.0	10.0	10.0
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial					
EFFECTIVE DATE: December 1, 2007					

BILL SUMMARY: Amends GS 15A-146 to provide that the court shall inquire whether a person wants to apply to the court for an expunction of the person’s record when the court dismisses charges against the person or enters a finding of not guilty. The court shall provide the appropriate form and information regarding petition for an expunction when requested by the person. A person may request the Clerk of Court to determine the status of their petition for an expunction if they have received no notice regarding the expunction within ninety days after filing the petition for an expunction. Directs the Administrative Office of the Courts and the State Judicial Council to study the expunction process to determine if it can be more easily understood and available to the public and report its findings to the Chief Justice by December 1, 2007.

ASSUMPTIONS AND METHODOLOGY: Under current G.S. 15A-146, if criminal misdemeanor or felony charges are dismissed or result in a finding of not guilty, the person may ask the court for an order expunging those charges from law enforcement and court records. HB1787 does not change the types of offenses to which expungement would apply, or the procedures or limitations. It would, however, establish new procedures intended to inform persons of their right to expunction, and to track the progress if an expungement petition is filed.

Section 1 of the bill would enact new subsection G.S. 15A-146(a) requiring the court to give certain notices, if the charge is dismissed or there is a finding of not guilty or not responsible. The court must inform the person that he or she may be eligible for expunction, inform the person of the requirements for expunction, and, if requested, provide a printed application form and information package that explains the procedure to petition for an expunction, and the Internet site where the form and instructions are located. Section 1 would require the court to give a notice and explanation to each individual defendant at the time all charges against a defendant are dismissed or the case results in an acquittal. As a result, the court would provide notice to many people who are not in fact eligible; although current charges may be dismissed, the court will not know whether the person has a prior conviction or a prior expunction (that information exists only in a confidential file, not accessible by court staff). Thus, HB 1787 would impose duties on the court that would require court time even for cases where the expunction right does not exist. Staff at the Administrative Office of the Courts (AOC) anticipate that many defendants will have questions and will request printed forms just in case they might be eligible.

Section 2 of the bill adds a new subsection G.S. 15A-146(d) that would require the Clerk to provide certain information to persons who file petitions. If a person has not received notice about the petition 90 days after filing and makes an inquiry to the Clerk, must inform the person, within five (5) business days, of the status of the petition and an estimated date when it might be "returned to the clerk." The processing of expunction petitions can take significant time, since the SBI must do a criminal record check, and the AOC must check its confidential files to ensure that a petitioner has not had a prior expunction. A Clerk who receives an inquiry would refer it to AOC staff in Raleigh, who, in turn, would contact the State Bureau of Investigation (SBI). AOC does not have available data from which to estimate the average length of time it takes the SBI to completely process an expunction order.

In Fiscal 2005-06 there were 45,464 criminal cases in superior court and 233,014 cases in district court in which all charges in the case were dismissed. This is the only readily available data; is limited to voluntary dismissals by district attorneys without leave to refile; and does not include additional cases for which HB 1787 would require court time, including dismissals by the court and not guilty verdicts from trials. Thus, the following estimate does not capture all costs associated with HB 1787. For the purposes of providing a fiscal estimate, AOC assumed that two-thirds of cases would be affected by the requirements of HB 1787. In many situations, although all charges in a particular case are dismissed, there may be other charges against the defendant, in another case at the same session of court, where there is a conviction. In such cases, the court would not be required to give notice since the expunction is not available to persons with convictions.

In practice, the task of notifying people would be the responsibility of deputy clerk assigned to the courtroom. This would affect the flow of the court calendar, including the judge, prosecutor and defense counsel, when defendants go to the clerk's station to receive information, ask questions, request forms, etc. It is assumed, conservatively, for the purpose of this fiscal note that the number of cases dismissed, found not guilty, etc. will remain the same in future years and that HB 1787 would require notice to defendants in only 66% of these cases, about 190,000. AOC estimates that, on average, HB 1787 would increase court time by one minute each for the judge, deputy

clerk, court reporter, and prosecutor. In addition, AOC would need two (2) court services positions in Raleigh to handle expunction-related inquiries from clerks and to process additional petitions. Across the entire court system, the following new positions would be needed:

Position	# Positions	Position Cost (\$ FY2007-08)	Position Cost (\$ FY2008-09)
Superior Court Judge	1.0	108,558	162,546
District Court Judge	2.0	184,038	273,320
Court Reporter	1.0	40,796	61,082
Deputy Clerk	2.0	48,942	74,960
Assistant District Attorney	2.0	119,394	191,196
Court Services Assistant	2.0	73,616	107,416
Total	10.0	575,344	870,520

HB 1787 would become effective on December 1, 2007 and the first-year cost would be for seven (7) months only. Annual recurring cost for the ten (10) positions starting in the second year is \$929,369. There would also be additional costs to print and distribute forms and instructions. If over a year, 1,000 additional forms and information sheets were provided to each county at cost of \$.25 each, the total annual printing and distribution cost would be \$25,000. In addition, annual postage and mailing cost increases are not included in this estimate. Section 3 directs AOC and the State Judicial Council to study and report to the Chief Justice how to make the expungement process more easily understood and available to the public. The report is due December 1, 2007. The estimate does not include the cost of this report requirement.

SOURCES OF DATA: Administrative Office of the Courts

TECHNICAL CONSIDERATIONS: None

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Signed Copy Located in the NCGA Principal Clerk's Offices