

GENERAL ASSEMBLY OF NORTH CAROLINA



Session 2009

Legislative Fiscal Note

BILL NUMBER: Senate Bill 262 (Fourth Edition)

SHORT TITLE: Expunctions/Purge Online Databases.

SPONSOR(S): Senator Berger of Franklin

FISCAL IMPACT					
	Yes (X)	No ()	No Estimate Available (X)		
	<u>FY 2009-10</u>	<u>FY 2010-11</u>	<u>FY 2011-12</u>	<u>FY 2012-13</u>	<u>FY 2013-14</u>
REVENUES:					
Judicial Branch	Indeterminate fiscal impact, some savings anticipated				
EXPENDITURES:					
Judicial Branch	Indeterminate fiscal impact, some expenditures anticipated				
Division of Motor Vehicles	\$301,473	\$125,133	\$125,133	\$125,133	\$125,133
Department of Correction	No fiscal impact anticipated				
POSITIONS:					
Division Of Motor Vehicles	2	2	2	2	2
PRINCIPAL DEPARTMENT(S) & PROGRAM(S) AFFECTED: Judicial Branch, Division of Motor Vehicles, Department of Correcton					
EFFECTIVE DATE: October 1, 2009					

BILL SUMMARY:

Current statutes direct the court to inform law enforcement agencies of an expunction order. This bill would also require the court to direct the Department of Correction (DOC), the Division of Motor Vehicles (DMV), and any other State or local government agencies identified by the petitioner to expunge their records of the petitioner's criminal conviction.

ASSUMPTIONS AND METHODOLOGY:

Judicial Branch

This bill would result in both savings and costs to the Administrative Office of the Courts (AOC). The net impact cannot be determined.

Savings/Reduction in Court Workload:

Currently, the clerks of superior court notify only the arresting agency regarding an expunction.

As a result, the Department of Corrections' (DOC) records may contain expunged convictions, which are included by third-party vendors in criminal records searches. AOC personnel have received phone calls and other communications from individuals whose records have been expunged but whose convictions still appear in online criminal records searches. If DOC were directed to expunge those records, AOC would anticipate a reduction in future call volume. Similarly, AOC would anticipate some reduction – although not as significant – due to directives to expunge the Department of Motor Vehicles (DMV) and other government records.

Costs/Increases in Court Workload:

Clerks already notify the arresting agency, but they will incur some costs to notify other governmental agencies of an expunction. AOC has the capability to inform DOC electronically, and AOC already informs DMV of expunctions for civil drivers' license revocations. However, this bill would require that those two agencies be notified with a certified copy of the order by the clerks of superior court. This requirement would impact the court system in the form of court personnel time, supplies, and postage.

New 15A-150 requires AOC to notify any private entity with which it has a licensing agreement for bulk extracts of criminal record data to delete the expunged record. AOC already does this electronically; therefore there would be no impact from this provision. Currently, AOC is only required to keep records of some types of expunctions. New 15A-151 would require AOC to maintain confidential records of all expunctions. There would be information technology and storage costs associated with this requirement. At this time, AOC cannot determine the exact cost of this requirement.

Currently, AOC is only required to keep records of some types of expunctions. New 15A-151 would require AOC to maintain confidential records of all expunctions. There would be information technology costs to modify an existing application and storage costs for hard copies. At this time, we cannot determine the exact cost of this requirement.

New 15A-152 establishes a private civil action against a private entity that disseminates expunged record information in violation of the statute. AOC cannot project the number of civil actions that will be brought under this section, although it is likely that some of them are currently brought under common law libel. Since this bill exempts entities already regulated by the federal Fair Credit Reporting Act and Gramm-Leach-Bliley Act, AOC would anticipate the potential pool of defendants for the state action permitted in this bill to be relatively small. Any increase in civil caseloads will impact court resources.

The bill would require that a person requesting confirmation of an expunged record swear to an affidavit that the record about which they are inquiring is their own. Falsely swearing an affidavit is punishable as perjury, a Class F felony. *AOC cannot project the number of charges that would result from this bill.* For every new charge, costs to AOC would range from \$1,135 (plea) to \$10,995 (trial). Indigent defense costs would average \$885 per indigent defendant. In FY 2007-08, a typical felony case took approximately 220 days to dispose in Superior Court. Any increase in judicial caseload without accompanying resources could be expected to further delay the disposition of cases.

Department of Transportation

Multiple organizations within the Division of Motor Vehicles would be impacted by this bill, including the Traffic Records Branch, Adjudication, Hearings, and CDL (Commercial Driver License) and the DOT Information Technology DMV Systems. Cost projections include the costs for developing and implementing the on-line expunction process, as well as costs associated with establishing the manual business process required to notify private entities that purchase bulk data from the DMV upon receipt of a certified copy of an expungement.

This bill will require changes to the State Automated Driver License System. The Division of Motor Vehicles (DMV) estimates the total system development cost to be \$156,698. This includes 1314 hours of time at \$85 per hour, for a total personnel cost of \$111,690. They have estimated ITS costs at \$17,085. Finally, they have added a 20 percent change budget, or \$27,923, to allow for issues identified during the development process.

Annual ongoing maintenance and operations costs are based on 250 hours for a total personnel cost of \$21,250, with \$5,313 added to cover ITS costs. This results in a total annual cost of \$26,563.

The DMV believes they will require two new positions to handle the increased workload, one for the Hearings Section, and a second for the Traffic Records Branch. The Hearings Section will execute the expunction order, as required by law, and notify the Traffic Records Branch. They must also notify the five external agencies with a contract to receive records when an expungement occurs on a driving record. This is a manual process that the DMV believes will require a pay grade 67 position, with a total annual personnel cost, including fringe benefits, of \$45,698. Recurring costs to support this individual are estimated at \$16,790, with additional nonrecurring costs the first year of \$29,235.

Driver License Adjudication Section estimates 60-75 expunction orders received from AOC monthly. Currently, according to the DMV, staffing levels in Traffic Records are operating under the required staffing levels. Due to the current economic environment and being severely understaffed, absorbing additional work would overwhelm the current Staff. The Traffic Records Branch grade 65 position would have a fully loaded personnel cost of \$41,872, with an additional \$6,165 in recurring costs and \$5,015 in nonrecurring costs to support the position.

Fiscal Research Division considers the DMV's estimates excessively high. The recurring costs to support the additional personnel are in excess of what other agencies budget. A more appropriate estimate would be \$5,500. The inclusion of an automatic 25 percent for ITS in the IT development costs seems arbitrary.

The DMV's estimates are based on the following assumptions:

1. The current application for bulk data is considered a licensing agreement.
2. The Division of Motor Vehicles will be notified that § 15A-150 has been violated and a certified copy of the expunction order will be received from the Clerks of Court.
3. The Traffic Records Branch will receive notification of all expunction orders sent to DMV from the court for update in SADLS.
4. The process will not impact external customers with online access to motor vehicle records.
5. Traffic Records will have approximately four to five bulk data customers receiving monthly distribution.
6. Traffic Records will need to modify current procedures to outline all of the requirements for the current laws. The revised procedures will include but are not limited to a directive on how to delete the offense from existing systems and procedures to follow for destruction of the driving records previously printed prior to implementation of expunction order by DMV.

7. Notifications must be sent to all current users informing them of the new law, licensing agreement and policies and procedures.

Any change from these assumptions will change the DMV's cost estimate.

The Department of Transportation is also concerned that this bill will result in the potential loss of federal funds. According to the Department, even if a driver didn't have a CDL but was operating a commercial motor vehicle (CMV) which required a CDL at the time of an offense which resulted in a conviction, the State couldn't expunge from the record any 49 CFR 383.51 convictions. If the State did, it could be found in substantial noncompliance with 49 CFR 384 and be subject to sanctions.

Department of Correction

The Department of Correction (DOC) reported to Fiscal Research that *they do not anticipate any fiscal impact resulting from the passage of this bill*. DOC currently performs this process with paperwork sent to them through the Combined Records group and the OPUS system has a system in place to mark the conviction as expunged. In addition to the required procedure already being current practice, DOC does not anticipate an increase in volume in expunctions because of this bill.

SOURCES OF DATA: Administrative Office of the Courts, Department of Correction

TECHNICAL CONSIDERATIONS: With the current workload and resource constraints, the DMV could not implement these system changes by October 1, 2009. Current workload may allow an October 2010 implementation date. Expunctions would be completed manually until that time.

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