



NORTH CAROLINA
ADMINISTRATIVE OFFICE
of the COURTS

2014 Expunctions Report

[NCAOC and DOJ Joint Report Pursuant to G.S. § 15A-160]

September 1, 2014



INTRODUCTION

The Department of Justice (DOJ) and the North Carolina Administrative Office of the Courts (NCAOC) are required to report annually to the General Assembly on the number and types of expunctions granted and the use of funds appropriated to support the processing of expunctions. Specifically, N.C.G.S. 15A-160 provides as follows:

§ 15A-160. Reporting requirement.

The Department of Justice and the Administrative Office of the Courts shall report jointly to the Chairs of the Joint Legislative Oversight Committee on Justice and Public Safety Oversight by September 1 of each year regarding expunctions. The report shall include all of the following information:

- (1) The number and types of expunctions granted during the fiscal year in which the report is made.
- (2) The number and type of expunctions granted each fiscal year for the five fiscal years preceding the date of the report.
- (3) A full accounting of how the agencies have spent the receipts generated by the expunction fees received during the fiscal year in which the report is made and for the five preceding fiscal years.

This report represents a joint effort by DOJ and NCAOC to meet the statutory requirement.

ANALYSIS

A Brief Overview of the Expunction Process

A person seeking an expunction typically must file a petition for expunction under the relevant statute. As custodian of the record, the clerk receives petitions for filing, collects any necessary fees, schedules the petitions for hearing when required, and then files and carries out any order entered by the court.

Certain expunction provisions require a criminal record check and a search by the NCAOC of the confidential index of prior expunctions prior to a hearing on the petition. When a petition must be sent to the SBI and NCAOC for such searches, a judge initiates the process by signing a request for the record searches. After a judge has signed the request, the petition is sent first to the SBI for the criminal record check, and the SBI then sends the petition to NCAOC for a search of the confidential index of prior expunctions.

Almost all expunctions require a hearing before the court. For expunction petitions sent to the SBI and NCAOC for record checks, the clerk does not schedule the hearing until the petition has been returned by the NCAOC and the petitioner requests a hearing. For expunctions that do not require record checks, the clerk schedules the hearing upon filing of the petition and collection of any required fees.

When a petition for expunction is granted, the clerk must expunge all record of the case from the court's records, including both paper and electronic records. The clerk also must notify State and local agencies of the expunction by certified copy of the order, and provide a certified copy of the order to the NCAOC.



Number and Type of Expunctions

For FY 2013-14, North Carolina state courts issued 13,601 expunction orders. The attached Table 1 details the number of expunctions for FY 2013-14 and the preceding five fiscal years, categorized by the statute under which the expunction was granted.

Receipts Generated from Expunction Fees

Section 18B.16 of S.L 2013-360 amended the expunction statutes to impose a \$175.00 fee on persons who file a petition for expunction of a criminal record on or after September 1, 2013. The \$175.00 fee is deposited in the General Fund, with \$122.50 of the fee remitted to the DOJ for the costs of criminal record checks performed in connection with processing petitions for expunctions and \$52.50 retained by NCAOC to pay the costs of processing petitions for expunctions.

Section 18B.16(g) further provides specifically as follows:

SECTION 18B.16.(g) The receipts generated by the fees imposed under this section are appropriated to the Administrative Office of the Courts and the Department of Justice for the 2013-2014 fiscal year and for the 2014-2015 fiscal year and may be used to assist with the cost of processing petitions for expunctions and conducting the criminal background checks required for expunctions. The Department of Justice may also use up to one million four hundred thousand dollars (\$1,400,000) of the revenue generated by the fees appropriated to the Department of Justice under this section to create and support up to five new staff positions to help process petitions for expunction and conduct criminal record checks required for those petitions.

From September 1, 2013 through June 30, 2014, NCAOC collected and disbursed a total of \$256,098.64 from expunction fees applied toward the General Fund. Of that amount, NCAOC retained \$77,300.00, remitted \$160,721.55 to DOJ, and remitted \$18,077.09 to the General Fund pursuant to G.S. 7A-321(d).

Of the funds remitted to DOJ during FY 2013-14 fiscal year, DOJ spent or disbursed \$38,558.04 on expunction payroll and administrative support expenses, leaving an unobligated cash balance of \$122,163.51 as of June 30, 2014. This cash balance is retained in a nonreverting special fund and will be applied to future year expunction processing costs.

In addition, DOJ has filled two of the five staff positions authorized by Section 18B.16. The remaining three positions will be recruited and filled when monthly recurring receipt levels can support the hiring of additional full time staff.

Of the funds remitted to NCAOC during FY 2013-14, NCAOC did not expend any of the funds because early collections were unstable. Pursuant to G.S. 143C-1-2(b), the funds reverted back to the General Fund as of June 30, 2014. NCAOC expects that collections during FY 2014-15 will allow NCAOC to establish positions to support the processing of expunctions and to meet other costs of processing expunctions.



SUMMARY

NCAOC and the State Bureau of Investigation will continue to take appropriate steps to expedite the processing of expunctions. Because the expunction fee was implemented September 1, 2014, early collections were unpredictable. Now that NCAOC and DOJ have a baseline to determine the amount likely to be generated by the fees, both NCAOC and DOJ anticipate maximizing the use of future funds to expedite the processing of expunctions. However, with the passage of section 17.1 of Session Law 2014-100, management control of the expunction fees remitted to DOJ has shifted from DOJ to the Department of Public Safety (DPS), and it is expected that DPS will determine the appropriate use of future funds.



Table 1: Expunction Orders for Fiscal Years 2008-2014

| Statute | 2008-09 | 2009-10 | 2010-11 | 2011-12 | 2012-13 | 2013-14 | Total |
|--------------|---------------|---------------|---------------|--------------|---------------|---------------|---------------|
| 7B-3200 | 0 | 0 | 1 | 3 | 0 | 2 | 6 |
| 15A-145 | 139 | 140 | 97 | 6 | 17 | 8 | 407 |
| 15A-145(A) | 0 | 3 | 77 | 144 | 146 | 175 | 545 |
| 15A-145(D1) | 0 | 3 | 14 | 15 | 16 | 7 | 55 |
| 15A-145.1 | 0 | 0 | 0 | 1 | 1 | 1 | 3 |
| 15A-145.2 | 0 | 0 | 0 | 0 | 0 | 8 | 8 |
| 15A-145.2(A) | 0 | 1 | 23 | 23 | 34 | 47 | 128 |
| 15A-145.2(B) | 0 | 8 | 7 | 13 | 14 | 22 | 64 |
| 15A-145.2(C) | 0 | 5 | 32 | 26 | 30 | 42 | 135 |
| 15A-145.3 | 0 | 0 | 0 | 0 | 0 | 1 | 1 |
| 15A-145.3(A) | 0 | 0 | 0 | 0 | 0 | 3 | 3 |
| 15A-145.3(B) | 0 | 0 | 7 | 6 | 7 | 4 | 24 |
| 15A-145.3(C) | 0 | 0 | 1 | 1 | 0 | 1 | 3 |
| 15A-145.4 | 0 | 0 | 0 | 4 | 15 | 21 | 40 |
| 15A-145.5 | 0 | 0 | 0 | 0 | 6 | 311 | 317 |
| 15A-146 | 10,011 | 11,480 | 11,414 | 8,990 | 10,006 | 12886 | 64,787 |
| 15A-147 | 0 | 4 | 52 | 69 | 66 | 60 | 251 |
| 15A-149 | 0 | 0 | 0 | 0 | 0 | 2 | 2 |
| 90-96(B) | 22 | 10 | 2 | 0 | 1 | 1 | 36 |
| 90-96(D) | 8 | 9 | 0 | 0 | 0 | 1 | 18 |
| 90-96(E) | 10 | 12 | 2 | 0 | 0 | 0 | 24 |
| 90-113.14(E) | 3 | 2 | 0 | 0 | 0 | 0 | 5 |
| Total | 10,193 | 11,677 | 11,728 | 9,298 | 10,359 | 13,601 | 66,856 |

NOTE: Session Law (S.L.) 2009-577 consolidated all criminal expunction statutes under Article 5 of Chapter 15A by recodifying expunction provisions from other chapters of the General Statutes, including Chapter 90. The expunction counts included in this table under Chapter 90 provisions predate that change or perhaps misstate the applicable statutory section.