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## FISCAL IMPACT REPORT

SPONSOR Martinez DATE TYPED 02/17/05 HB \_\_\_\_\_

SHORT TITLE Criminal Record Expungement Act SB 646

ANALYST Ford

### APPROPRIATION

Appropriation Contained		Estimated Additional Impact		Recurring or Non-Rec	Fund Affected
FY05	FY06	FY05	FY06		
			Minimal – See Narrative		

(Parenthesis ( ) Indicate Expenditure Decreases)

Conflicts with  
HB 246, HB 734

### SOURCES OF INFORMATION

LFC Files

### Responses Received From

Attorney General (AGO)  
Children, Youth and Families Department (CYFD)  
Human Services Department (HSD)  
Public Education Department (PED)

### SUMMARY

#### Synopsis of Bill

Senate Bill 646 codifies the practice for courts to expunge an individual's criminal record in specified circumstances.

It provides that the court shall expunge the public records and files within 30 days of when an accused files a petition if the court finds that no other charge or proceeding is pending against the accused, and that:

- The accused was a victim of identity theft,
- The accused was released without a conviction in a proceeding for a violation of a municipal offense, misdemeanor or felony,
- The accused was convicted for an offense but has no other conviction after completion of

the sentence for the original conviction for a period of 2 years after a misdemeanor not including an offense committed against minors or children, a sex offense, or an offense involving domestic violence,

- The accused was convicted of misdemeanor aggravated battery but has no other conviction after completion of the sentence for the original conviction for a period of 4 years.

The effect of an expungement order is that the related proceedings are treated as if they never occurred and officials and the accused may reply to an inquiry that no record exists with respect to the accused.

The bill does not affect the expungement provisions of Section 29-3-8.1 NMSA 1978. This section allows a person to petition the department of public safety to expunge arrest information on the person's state record or federal bureau of investigation record if the arrest was for a misdemeanor or petty misdemeanor offense and the arrest was not for a crime of moral turpitude.

The bill provides that when an expungement order is issued to the CYFD, PED or HSD, the department may comply with such an order by notifying the court that the records are confidential public records and must be maintained for audit or other purposes, detailing identifying information and later releasing the records when permitted by law, or deleting information related to the expungement order when permitted by law.

### Significant Issues

The bill provides for expungement if the accused was a victim of identity theft. However, it may be prudent for the bill to be more specific so that the bill does not allow information to be expunged regarding crimes that the person actually did commit. The bill could specify that the accused was a victim of identity theft, and the charge or arrest information results from the unauthorized use of the person's identity.

The AGO notes that the bill allows for expungement when a charge was discharged, but does not specifically mention "conditional discharge" or the use of conditional discharge information in sentencing enhancements.

CYFD notes that this bill conflicts with other statutes. The New Mexico Criminal Offender Employment Act allows misdemeanors of moral turpitude to be used to bar a person from employment or licensure for up to three years. Also, CYFD family services refuses background clearance on the basis of some of the enumerated misdemeanor offenses and considers some misdemeanors that are directly related to the ability to provide a safe responsible and morally positive setting for children. In these circumstances, CYFD takes into account some misdemeanors committed up to seven years prior.

PED raises the question of whether a person on probation or who has violated probation during the applicable period since conviction would qualify for expungement.

### **FISCAL IMPLICATIONS**

The bill may result in increased costs to the courts for rulemaking and to conduct hearings for expungement petitions. There may also be minor costs to departments to comply with expungement orders.

**CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

HB 734 and HB 246 provide for the expungement of records in cases of identity theft.

**TECHNICAL ISSUES**

AGO notes that arrest records are defined to include information gathered from the national crime information center (NCIC). While New Mexico courts would have jurisdiction to expunge information from a state record, once the information was transferred to NCIC it would be the federal agency's property and not subject to New Mexico expungement orders.

HSD recommends an amendment to require the courts to provide notice to CYFD, HSD, and PED of a court's motion or the filing of a petition for expungement so that representatives of the departments can determine if they have any of these records and respond accordingly.

PED notes that two other sections relate to expungement of arrest information: Sections 30-31-28 and 32A-3B-21 NMSA 1978.

**EF/lg**