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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/28/13

SPONSOR Maestas LAST UPDATED \_\_\_\_\_ HB 598

SHORT TITLE Criminal Record Expungement Act SB \_\_\_\_\_

ANALYST Chenier

### ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY13	FY14	FY15	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
<b>Total</b>		\$140.0	\$140.0	\$280.0	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

This bill is related to Senate Bill 294

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

New Mexico Corrections Department (NMCD)  
 Department of Public Safety (DPS)  
 Attorney General's Office (AGO)  
 Public Defender Department (PDD)  
 Administrative Office of the Courts (AOC)  
 Administrative Office of the District Attorney (AODA)  
 New Mexico Sentencing Commission (NMSC)

### SUMMARY

#### Synopsis of Bill

House Bill 598 would allow an individual's public criminal records to be expunged after a hearing proving they were victims of identity theft, after an arrest without conviction, or after conviction provided that specific time periods have elapsed for specific types of convictions. After a hearing on the petition, courts would have thirty days to issue an order requiring that all arrest records and public records be expunged.

The bill places limitations on what is expunged, excluding from the definition of arrest records certain items such as records that reveal confidential sources; if the records are already confidential under the Arrest Record Information Act; records maintained for law enforcement purposes; records maintained by the Children, Youth, and Families Department; records

maintained by the Human Services Department; and, records maintained by the Public Education Department.

House Bill 598 sets out procedures for expungement of records when there has been an identity theft or a wrongful arrest, indictment or charge. The person must petition the district court. After a hearing where the person shows that he is a victim of identity theft or was wrongfully arrested, indicted or charged, the court shall issue an order within thirty days requiring all arrest records and public records be expunged. The order shall prohibit law enforcement agencies and courts from releasing copies of such records except upon order of the court.

The bill also lists offenses that are not subject to expungement including offenses involving the use of a deadly weapon, embezzlement, DWI, and offenses that require registration under the sex offender act.

### **FISCAL IMPLICATIONS**

The DPS provided the following analysis:

In the last two years DPS has received 216 expungement requests under Section 29-3-8.1 NMSA 1978 and court orders. An average expungement of arrest records takes three staff a total of 1.5 hours per record at a cost of \$33 per record.

For every 1000 cases that come in it will cost approximately \$33,000 in personal services costs. Hiring three full-time to handle the additional expungement requests would cost \$140,000 and provide the capacity to handle approximately 4000 records expungement request per year. Clearly, if the volume of requests is higher than 4000 per year, a backlog would result or additional would be required.

In addition to the costs mentioned above, the New Mexico Department of Public Safety is required to undertake, with the Administrative Office of the Courts, a rulemaking procedure and it is expected that this process and the enforcement of the intended rules will have an additional significant fiscal impact.

The AOC indicates there will be unknown costs resulting from this bill and would be dependent on the number of petitions for expunging of records.

### **SIGNIFICANT ISSUES**

The AGO provided the following analysis:

Law enforcement and prosecuting agencies have many legitimate purposes for maintaining arrest records and incident information. Even in cases where no conviction occurs, law enforcement and prosecutors rely on past criminal history to obtain a complete profile of the accused or target. This same past information is relied upon by law enforcement to assess violent tendencies, violent tendencies towards law enforcement and to assess the dangerousness of any encounter with a suspect. In domestic violence cases, for example, past arrests and incidents are important information in determining whether a suspect has lethality factors, information vital to victims, witnesses, law enforcement and judges. These are factors used to set bond.

The bill enumerates cases which are not subject to expungement: offenses involving use of a deadly weapon, embezzlement, DWI and sex offenses that require registration as a sex offender. The bill omits from this list homicides, domestic violence and child abuse.

### **CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP**

This bill is related to SB294, but this bill would allow expungement for a much broader scope of convictions.

### **POSSIBLE QUESTIONS**

Section 7(B) contains language, “an expunged proceeding shall not be used to *establish* duties of a district attorney or law enforcement officer with regard to an habitual offender or the fact of a previous conviction.” The intent of this language is not clear. Will prosecutors be able to use prior expunged convictions as evidence, impeachment or enhancement of penalties?

### **AMENDMENTS NEEDED TO IMPROVE THIS BILL**

The AGO suggested the following:

1. Add domestic violence offenses to the exclusions.
2. Add child abuse offenses to the exclusions.
3. Add homicides to the exclusions.
4. Clarify “offenses that registration under the Sex Offender Registration Act.” There are many sex-related offenses that do not require sex offender registration.
5. Add a provision to notify victims of the petition to expunge, and to notify the victims of the hearing date, time and place.

### **WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL**

The PDD provided the following:

Under existing law, there is no automatic right for victims of identity theft and wrongful arrest, and the other classes of petitioners in the bill, to seek expungement from the courts. They are currently at the mercy of courts, who have no clear guidance on where it is appropriate to order expungement.

EC/blm