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FISCAL IMPACT REPORT

ORIGINAL DATE 02/06/13

SPONSOR Sanchez, M. LAST UPDATED _____ HB _____

SHORT TITLE Criminal Record Expungement Act SB 294

ANALYST Chenier

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

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

(Parenthesis () Indicate Expenditure Decreases)

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

Senate Bill 294 would allow an individual's public criminal records to be expunged after a hearing proving they were victims of identity theft, wrongful arrest, or one year after dismissal or release without conviction of any alleged ordinance, misdemeanor, or felony violation. 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 public records and arrest records certain records 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 received pursuant to background checks; records maintained by the Children, Youth, and Families Department; records maintained by the Human Services Department; and, records maintained by the Public Education Department. Section 5 includes an exception that allows the record to be released to the public if it is ordered by a court.

Senate Bill 294 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 court shall deliver a copy of the order to all relevant law enforcement agencies. The order shall prohibit law enforcement agencies and courts from releasing copies of such records except upon order of the court.

Section 5 of the bill allows a person convicted of a misdemeanor or ordinance (but not including sex offenses, crimes against minors, and DWI convictions) to petition for expungement if no other charge or proceeding has occurred for a period of five years if the conviction was for a misdemeanor, or ten years if the conviction was for an offense involving domestic violence or abuse.

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 NMSC provided the following analysis regarding significant issues:

Section 8 of the bill states that nothing in the act shall be construed to prohibit a law enforcement agency from maintaining and using criminal history information for any lawful purpose. This provision may be particularly important for the prosecution of subsequent domestic violence offenses.

The AGO provided the following analysis:

The bill provides relief for persons wrongfully arrested, or acquitted, dismissed without a conviction, and other instances of no conviction, to have all records pertaining to the

criminal charges expunged from public records. It also provides relief from the growing problem of identity theft. In Section 5(E), the bill includes exceptions for crimes against minors or children, a sex offense and DWI. However, in Section 5 (B) (2), permits domestic violence offenders, after 10 years and no other charges or proceedings, to successfully petition for expungement.

Opponents argue that this bill prevents law enforcement from maintaining records and may be contrary to federal law. Also, expungement may be a safety issue for law enforcement officers who rely upon arrest records and other data maintained by law enforcement to assess dangerousness or violent tendencies, and criminal records which are routinely used in determining the circumstances, such as modus operandi, in investigating new criminal offenses.

Sex offenses and domestic violence offenses are notorious for being difficult to investigate and prosecute. Law enforcement and prosecutors frequently use prior arrest and other criminal records to analyze cases. Expungement could hamper the investigation in some cases.

TECHNICAL ISSUES

The AODA provided the following analysis regarding technical issues:

The bill would not allow someone to petition for an expungement for at least a year. Prior to that time presumably many of the records that the bill appears to target would be accessible to the general public and interested persons would have already obtained the information. Law enforcement agencies and others could have already disseminated it in a variety of methods.

The bill also states that a person released without conviction for a crime may petition the court for an order to expunge arrest records and public records “one year after dismissal or release.” Many persons are released from custody, by posting bail or other order of the court, but their case is not resolved for more than a year. Sometimes a person is arrested but they are not indicted or formally charged for some period of time while the investigation is continued and the bill might possibly mean that if they weren’t formally charged for a year all of the records pertaining to their initial arrest would be expunged.

POSSIBLE QUESTIONS

The AGO provided the following questions:

1. What is a “sex offense”?
2. Does that term include only the offenses enumerated in Article 9 and Article 6A of the criminal code?
3. Does sex offense mean “Online prostitution”?
4. Would the expungement statute include sex offender registration offenders?
5. Would failure to register qualify as a “sex offense” under this bill?

ALTERNATIVES

The AGO provided the following list of possible amendments:

1. Clarify “sex offense”.
2. Define “wrongfully”. An acquittal does not mean that the defendant was “wrongfully” arrested or charged.
2. Reconcile IPRA requirements with proposed expungement statute.
3. Consider removing domestic violence incidents, misdemeanor and felony.

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/bm