

LFC Requester:	Aurora Sanchez
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**AGENCY BILL ANALYSIS
2015 REGULAR SESSION**

WITHIN 24 HOURS OF BILL POSTING, EMAIL ANALYSIS TO:

LFC@NMLEGIS.GOV

and

DFA@STATE.NM.US

{Include the bill no. in the email subject line, e.g., HB2, and only attach one bill analysis and related documentation per email message}

SECTION I: GENERAL INFORMATION

{Indicate if analysis is on an original bill, amendment, substitute or a correction of a previous bill}

Check all that apply:

Original	<input checked="" type="checkbox"/>	Amendment	<input type="checkbox"/>	Date	<u>January 30, 2015</u>
Correction	<input type="checkbox"/>	Substitute	<input type="checkbox"/>	Bill No:	<u>SB 365</u>

Sponsor:	<u>Sen. Michael Sanchez</u>	Agency Code:	<u>Attorney General's Office</u>
Short	<u>Expunge Certain Criminal</u>	Person Writing	<u>Tony Long, AAG</u>
Title:	<u>Records</u>	Phone:	<u>505/222-9020</u> Email <u>tlong@nmag.gov</u>

SECTION II: FISCAL IMPACT

APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Nonrecurring	Fund Affected
FY15	FY16		

(Parenthesis () Indicate Expenditure Decreases)

REVENUE (dollars in thousands)

Estimated Revenue			Recurring or Nonrecurring	Fund Affected
FY15	FY16	FY17		

(Parenthesis () Indicate Expenditure Decreases)

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY15	FY16	FY17	3 Year Total Cost	Recurring or Nonrecurring	Fund Affected
Total						

(Parenthesis () Indicate Expenditure Decreases)

Duplicates/Conflicts with/Companion to/Relates to:
Duplicates/Relates to Appropriation in the General Appropriation Act:

SECTION III: NARRATIVE

This analysis is neither a formal Attorney General’s Opinion nor an Attorney General’s Advisory Letter. This is a staff analysis in response to an agency’s, committee’s, or legislator’s request.

BILL SUMMARY

Synopsis: The Criminal Records Expungement Act permits removal of criminal records from public inspection, including arrests, acquittals, dismissals, successful completion of a pre-prosecution diversion program, and “proceedings otherwise discharged.” The bill includes provisions for misdemeanors and felonies, and allows for misdemeanor convictions to be expunged after 5 years of time if misdemeanor or misdemeanors arose out of once incident and no further incidents occurred. Further, the bill allows convictions for domestic violence or abuse misdemeanors to be expunged after a period of 10 years has passed and no further incidents occurred. The bill further requires the Department of Public Safety and Administrative Office of the Courts to implement the act and notify defendants of their rights under the act without appropriation for additional staff or supplies.

FISCAL IMPLICATIONS

N/A

SIGNIFICANT ISSUES

This bill provides for expungement of criminal records so that in the arrest records and court records, it treats the proceedings “as if they never occurred” after court order. Section 6.

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.

This bill may prevent law enforcement from maintaining or locating records. Expungement of records 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, or a prosecutor's ability to analyze a case and offer an appropriate plea offer based on a transparent risk assessment. Although section 5 (E) indicates that the provision does NOT apply to offenses against children, minors, sex offenses or DWI, section 4 of the proposed bill applies to "a person released without conviction for violation a municipal ordinance, misdemeanor or felony." It is not clear if this means that a person charged with but not convicted of a felony sexual offense against an adult could have the records expunged.

Another drafting issue is the lack of definition or citation regarding "sex offense" as used within the language of the bill. It is unclear if "sex offense" includes only the offenses enumerated in Article 9 and Article 6A of the criminal code or would apply to other offenses outside of Article 9 such as child exploitation, child solicitation by an electronic communication device, and human trafficking.

A number of expungement statutes (or statutes and rules for sealing records) already exist in New Mexico, including but limited to;

Arrest records, NMSA 29-3-8.1

DNA, NMSA 29-16-10 and 10.1

Conditional discharge for first time drug possession, NMSA 30-31-28(D)

Children's Code, 32A-3B-21(A)(1) and (2)

Delinquency Proceedings, NMSA 32A-2-26

Delinquency Proceedings, Rule 10-262, automatic sealing of records

Identity Theft, NMSA 31-26-16, expungement from police and court records

Identity Theft, 30-16-24.1(I), correction of records

District Court Rule 5-123, sealing records

Grand Jury, NMSA 31-6-5, sealed no bills, Also NMSA 31-6-7, secret proceedings

Finally, the bill requires the Department of Public Safety and the Administrative Office of the Courts to implement procedures for administration of the act and notification to defendants of their rights under the act but with no appropriation for additional staff and resources.

PERFORMANCE IMPLICATIONS

N/A

ADMINISTRATIVE IMPLICATIONS

N/A

CONFLICT, DUPLICATION, COMPANIONSHIP, RELATIONSHIP

N/A

TECHNICAL ISSUES

A definition or statutory citation to define "sex offense" as contemplated is necessary for practical application. Likewise, use of the term "wrongfully" may be misleading as an acquittal does not necessarily mean that a defendant was "wrongfully" arrested or charged based on the standard of probable cause. IPRA requirements with proposed expungement statute may need to be reconciled.

OTHER SUBSTANTIVE ISSUES

N/A

ALTERNATIVES

N/A

WHAT WILL BE THE CONSEQUENCES OF NOT ENACTING THIS BILL

Status quo

AMENDMENTS