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## FISCAL IMPACT REPORT

ORIGINAL DATE 02/23/11

SPONSOR Sanchez, M. LAST UPDATED \_\_\_\_\_ HB \_\_\_\_\_

SHORT TITLE Codify Authority to Expunge Criminal Record SB 389

ANALYST Daly

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

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
<b>Total</b>	NFI	\$.56-\$1.12	\$1.12- \$2.24	\$1.68-\$3.36	Recurring	General Fund

(Parenthesis ( ) Indicate Expenditure Decreases)

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Administrative Office of the Courts (AOC)  
 Public Defender Department (PDD)  
 New Mexico Corrections Department (NMCD)

### SUMMARY

#### Synopsis of Bill

Senate Bill 389 enacts the Criminal Record Expungement Act. It sets forth procedures for allowing individuals to obtain expungement of their criminal records relating to identity theft, wrongful arrest, and release without conviction.

Additionally, it allows for expungement of certain arrest and public records for a person convicted of a single incident involving a misdemeanor or violation of a municipal ordinance after completion of the sentence, including probation, if no other charge or proceeding has occurred for a period of 5 years for a misdemeanor unless the conviction involved domestic violence or abuse, in which case the period is increased to ten years. Expungement is not available if the crime was a sex offense, was committed against minors or children, or involved driving while under the influence of intoxicating drugs or alcohol.

An order of expungement shall prohibit all relevant law enforcement agencies and courts from releasing copies of those arrest and public records.

The bill directs AOC and DPS to develop rules and procedures to implement the Act, including notifying an accused of the accused's rights under the Act.

This bill carries a delayed effective date of January 1, 2012.

### **FISCAL IMPLICATIONS**

The AOC anticipates a financial impact on the judiciary proportional to the enforcement of this law and the number of petitions filed. Costs shown in the table above were derived from data provided by the AOC, and include those for judicial time for the “civil other” category of cases from the district court judges’ weighted caseload study and assumes five to ten petitions seeking expungement are filed statewide each year. The costs for FY 12 have been prorated in light of the delayed effective date of the bill.

### **SIGNIFICANT ISSUES**

The PDD notes that most other jurisdictions provide statutory schemes for expungement in similarly narrow circumstances.

Since DPS is the keeper of the official criminal history records, the AOC suggests it may be better to require DPS to provide notice to all relevant law enforcement agencies and NCIC of orders directing record expungements.

### **ADMINISTRATIVE IMPLICATIONS**

The NMCD reports that since the bill does not require destruction of relevant criminal records but only nondisclosure, it should be able to absorb this administrative impact with current staffing levels.

### **TECHNICAL ISSUES**

Section 4(B) of SB 398 does not contain any time period for eligibility for expungement relating to a violation of a municipal ordinance, although such expungement is included in Section 4(A).

The AOC suggests defining “identity theft” and “wrongful arrest” to avoid confusion in the future over legislative intent related to those terms.

### **OTHER SUBSTANTIVE ISSUES**

The NMCD points out that SB 389 does not contemplate or address the consequences for an inadvertent release of expunged records, although in large law enforcement agencies with numerous records and staff, such mistakes are likely.

### **AMENDMENTS**

The NMCD requests an amendment to allow a “good faith mistake” defense against contempt or other civil or criminal penalties in such a situation.

The AOC suggests amending Sections 3(C), 4(C) and 5(E) to require DPS to deliver copies of expungement orders to all relevant law enforcement agencies and courts.

MD/bym