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## FISCAL IMPACT REPORT

ORIGINAL DATE 2/13/2007

SPONSOR Swisstack LAST UPDATED \_\_\_\_\_ HB 515

SHORT TITLE Delinquency Petition Record Requirements SB \_\_\_\_\_

ANALYST Lucero

### APPROPRIATION (dollars in thousands)

Appropriation		Recurring or Non-Rec	Fund Affected
FY07	FY08		
NFI	NFI	NFI	NFI

(Parenthesis ( ) Indicate Expenditure Decreases)

Relates to HB32, HB449.

Relates to Appropriation in the General Appropriation Act

### SOURCES OF INFORMATION

LFC Files

#### Responses Received From

Public Defender Department (PDD)  
 Children, Youth and Families Department (CYFD)  
 Administrative Office of the Courts (AOC)  
 Juvenile Parole Board (JPB)

### SUMMARY

#### Synopsis of Bill

House Bill 515 amends Section 32A-2-26NMSA 1978 – Sealing of records to include the ability of a person subject to a delinquency petition to request the court order the legal and social files and records of the court, the department, probation services and any other agency in the case sealed. Significant amendments relate to the courts ability to order sealing of records if the court finds that: A. (1) the child has reached the age of majority and two years have elapsed since the final release of the person from legal custody and supervision; and the person has not, within the two years immediately prior to filing the motion, been convicted of a felony or of a misdemeanor involving ~~[moral turpitude]~~ driving under the influence of intoxicating liquor or drugs or been found delinquent by a court and no proceeding is pending seeking such a conviction or finding.

B. (4) (5) The bill further identifies additional agencies (the local detention facility and the public defender department) as agencies to receive notice of the motion to seal.

C. Upon the entry of the sealing order, agencies that maintain such records shall ensure that all personal identifying information in the index or electronic references shall be deleted. The bill indicates that copies of the sealing order shall be sent by the petitioner to each agency or official named in the order. Copies of the sealing order shall also be available in the district court clerk's office.

G. A person who is not the subject of a delinquency petition or a person who is determined by the court not to be a delinquent offender shall have ~~[his]~~ the person's files and records automatically sealed by the court no later than six months after the person reaches the age of majority.

H. ~~per the bill, this section of the Children's Code would be deleted; [If two years have elapsed since a person was released from legal custody and supervision and the department has not received any new allegations of delinquency regarding the person, that person's files and records shall be automatically sealed]~~

Essentially, the bill puts an age (eighteen) as the minimum age for a person to request sealing of his/her juvenile record.

## FISCAL IMPLICATIONS

There could be a need for additional resources for the courts to conduct research relating to the six-month deadline before automatically sealing cases. The judiciary's data system does not distinguish cases based on whether there is a determination of delinquency. This situation led to the November 2006 adoption of a rule by the Supreme Court requiring the children's court attorney or department to notify the court when a case must be sealed. Using this mechanism to implement Subsection G, any costs to the court are minimized.

Although the bill does not make an appropriation, it could have indirect fiscal impact on CYFD. The bill would likely decrease costs to the department by reducing the time and labor required to seal and archive cases on person's under the age of eighteen.

## SIGNIFICANT ISSUES

The bill provides language that clarifies and details the process for sealing of juvenile records. By placing an age (eighteen) as the minimum age required to request sealing of records, it allows the department to process sealing of records in a more efficient, equitable manner and addresses concerns of public safety. Current language allows for a person to request sealing of his/her juvenile record at any age provided two years has elapsed since release from custody and supervision of the department. An example of a public safety concern related to the current language is that a fourteen year old could be adjudicated of an armed robbery, complete a one year probation term and then request his/her record be sealed at age seventeen. The department and the court would not have access to this person's delinquent history if this person were to commit a new delinquent act at age seventeen. Department staff safety and public safety is compromised, as is the ability of the court to make an informed decision related to the new delinquent act.

Subsection C's proposal to delete all personal identifying information, both paper and electronic, in the case conflicts with Subsections D and E, which permit the court to reopen files and records

in certain situations, such as a new finding of delinquency or a conviction. With the destruction of all personal identifying information, it would be impossible to locate the case. In addition, if the bill intends to protect the identity of the youth, then making a copy of the sealing order available to the public in the clerk's office may reveal the very information that is being sought to protect.

Regarding Subsection G, the Supreme Court in November 2006 promulgated a rule for automatic sealing of court records. The rule requires the children's court attorney to present the court with an order to seal files and records when the petition does not result in an adjudication of delinquency, but is dismissed, acquitted, etc. The rule also requires CYFD to present the court with an order seal records and files when a person has been released from court-ordered supervision and no new allegations of delinquency have been received in the past two years. The court clerk is required to provide copies of the court's order to the children's court attorney, CYFD, law enforcement offices, any other agency having records or files in the case, the person's attorney, and the person who is the subject of the sealing order.

The rule does not address sealing records for the person who is not the subject of a delinquency petition, because that case is never filed in court and is handled informally by probation services. The department should determine how to seal its files and records in such cases.

The bill's proposed "six months after the age of maturity" deadline would require court staff to conduct manual research on each case to determine when to automatically seal files and records. It is also unlikely that the six-month deadline would be met in the case of a person detained for an alleged crime committed on the day before the 18th birthday. Police investigations and other processes in the case could delay the court's being able to adjudicate the case and seal records within the 6-month time frame.

### **ADMINISTRATIVE IMPLICATIONS**

There may be an administrative impact on the courts as the result of the implementing new requirements in the bill.

CYFD will need to add resources to address the automatic sealing of juvenile records that meet criteria under 32A-2-26 Section 1 (H). The department's current electronic system for sealing records is inadequate to meet this requirement of the Children's Code as the system is not designed to seal records on persons under the age of eighteen. Public safety is also a concern and potential consequence of not enacting this bill as delinquent history on many juveniles would not be accessible to the department and the courts.

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

Relates to HB32, HB449

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

Status Quo

DL/yr