

Fiscal impact reports (FIRs) are prepared by the Legislative Finance Committee (LFC) for standing finance committees of the NM Legislature. The LFC does not assume responsibility for the accuracy of these reports if they are used for other purposes.

Current FIRs (in HTML & Adobe PDF formats) are available on the NM Legislative Website (legis.state.nm.us). Adobe PDF versions include all attachments, whereas HTML versions may not. Previously issued FIRs and attachments may be obtained from the LFC in Suite 101 of the State Capitol Building North.

FISCAL IMPACT REPORT

ORIGINAL DATE 03/13/11

SPONSOR Begaye LAST UPDATED _____ HB 564

SHORT TITLE DUI 4th Degree Felony Conviction Expungement SB _____

ANALYST Daly

ESTIMATED ADDITIONAL OPERATING BUDGET IMPACT (dollars in thousands)

	FY11	FY12	FY13	3 Year Total Cost	Recurring or Non-Rec	Fund Affected
Total	NFI	NFI	NFI			

(Parenthesis () Indicate Expenditure Decreases)

Relates to SB 3, SB 127, SB 197, SB 306, SB 307, SB 308, SB 387, SB 405, SB509, HB 49, HB 183, HB 263, HB 325, HB 329, HB 330, HB 357 and HB 392.

SOURCES OF INFORMATION

LFC Files

Responses Received From

Administrative Office of the Courts (AOC)
 Administrative Office of the District Attorneys (AODA)
 Attorney General's Office (AGO)
 Taxation & Revenue Department (TRD)
 New Mexico Corrections Department (NMCD)
 Department of Transportation (NMDOT)

SUMMARY

Synopsis of Bill

House Bill 564 provides a method to expunge records of a person convicted of a fourth degree felony based on an offense of driving while under the influence of intoxicating liquor or drugs (DUI). To have the records expunged a person must petition a district court and the court must find that:

- (1) The person has not been convicted for DUI and has no other misdemeanor or felony convictions for seven years from the last day of serving a sentence for the fourth degree felony, including probation or parole;
- (2) no other charge or proceeding has occurred within the seven-year period or is pending at the time of the expungement hearing; and
- (3) justice will be served by an order to expunge.

If the court grants the petition, all records pertaining to the arrest, prosecution, conviction and incarceration must be sealed or deleted by the prosecution, the NMCD, and the AODA. The law enforcement agency involved must request that the FBI expunge related records. The conviction shall be treated as if it never occurred, and officials are required to reply to any inquiry that no record of conviction exists for that person.

The effective date of this bill is July 1, 2011.

FISCAL IMPLICATIONS

It is anticipated that the agencies impacted by this bill will be able to absorb the additional administrative burden of deleting or sealing records related to convictions that have been expunged with current staff levels.

SIGNIFICANT ISSUES

HB 564 allows a person who has been convicted four times of DUI to petition a district court seven years after serving his or her sentence to expunge his or her records of those convictions if he or she meets the specified criteria. (Current law classifies a fourth DUI conviction as a fourth degree felony and subjects an offender to eighteen months in prison, six months of which cannot be suspended or deferred.)

In response to the remedy provided in this bill, the AGO asserts:

Expungement of dwi records for felony dwi offenders on their fourth conviction would be counterproductive to the interests of the citizens of our State. Expungement runs contrary to our public policy and agenda set forth by our courts and prosecutors to improve the quality and accessibility of dwi records. There should be no rewards offered for those drivers who are convicted of multiple dwi offenses. Those offenders who persist on driving drunk and jeopardizing the lives of other citizens of our State should not be given any rewards but rather should be held responsible for the consequences of their actions. This bill would act as a reward for bad behavior for convicted dwi offenders who have reached the felony mark in their drunken driving records.

The AGO also raises these concerns:

In order to reduce the amount of drunken driving fatalities on our roadways and highways, it is imperative for our State to safeguard traffic records and to ensure that the sharing of prior convictions occurs among all jurisdictions. The State of New Mexico not only shares records within the jurisdictions of this state but also with other states as well as the federal government. Expungement is not an option for New Mexico.

It is common for many district attorneys and their jurisdictions to have a difficult time obtaining prior dwi convictions for enhancement purposes. To expunge felony records would not serve any purpose in bringing dwi offenders to justice. Rather, it would prevent those necessary records from getting in the hands of the prosecutors who need to do their jobs.

The TRD notes that its Motor Vehicle Division (MVD) is not listed as one of the agencies that

should expunge the conviction from its records. If the bill is clarified to require expungement by MVD, then a second, more serious issue arises. The TRD warns:

any such requirement imposed upon MVD will result in the state being out of compliance with regulations imposed by the Federal Motor Carrier Safety Administration (FMCSA) which require all DWI convictions to be maintained on a person's driving record for 55 years. Such non-compliance could jeopardize federal funds that support the State's Commercial Driver License (CDL) program, as well as other federal funds that support the traffic safety bureau of the department of transportation and the motor transportation division of the department of public safety.

The NMDOT also suggests that this bill may be contrary to the driver's license compacts with other states regarding driver history for DUI offenses.

PERFORMANCE IMPLICATIONS

The NMDOT advises it is responsible for compiling and analyzing data on traffic crashes and identifying traffic safety problems and countermeasures for reducing crashes, injury and death. Driver history is utilized to provide analysis and support for directing resources aimed at reducing DUI.

RELATIONSHIP

HB 564 relates to:

- SB 3, Blood Tests for Intoxication and Drugs
- SB 127, Prohibit Certain DWI Plea Agreements
- SB 197, Use of Electronic Sobriety Monitoring Devices
- SB 306, Home Breathalyzer for Certain DWI Offenders
- SB 307, Seizure of Vehicle for Certain DWI Offenders
- SB 308, Interlock Regulations for DWI Offenders
- SB 387, Chemical Tests with Probable Cause of DWI
- SB 405, DWI and Drug Standards Clarification
- SB 509, No Car Interlock for Certain Convictions
- HB 49, DWI as Drugs in Blood & Interlock for Alcohol
- HB 183, DWI First Offender Follow-Up Program
- HB 263, Vehicle Seizure W/DWI Arrest in Certain Cases
- HB 325, Make DWI Death a Serious Violent Felony
- HB 329, Consistent Felony DWI Convictions
- HB 330, Penalty Increase for DWI Offenders
- HB 357, Homicide by Boat & Great Bodily Harm by Boat
- HB 392, DWI Alcohol Concentration Levels

TECHNICAL ISSUES

The AODA points out that the provision in Section 1(E) allowing law enforcement agencies to maintain and use criminal history information for any lawful purpose seems to contradict the directives in Section 1(C) that law enforcement agencies delete and seal all records all records

related to a conviction that has been expunged.

OTHER SUBSTANTIVE ISSUES

The AGO provides this additional background:

In 2005, the National Highway Traffic Safety Administration (NHTSA) focused on New Mexico as one of the ten worst states for dwi fatalities and injuries. Since that time, federal money has been provided to our State in six high-injury and fatality counties (Bernalillo, Dona Ana, McKinley, Rio Arriba, San Juan, and Santa Fe) for the purposes of better record keeping for dwi/traffic records, more law enforcement, more trainings for prosecutors and law enforcement, more dwi checkpoints, and more public awareness campaigns, all to work together in an effort to reduce dwi in New Mexico.

For the past ten years or so, New Mexico has been ranked as one of the worst states for dwi fatalities and injuries by being in the top ten of our fifty states. In October 2009, statistics released by the NHTSA indicated that New Mexico dropped to 11th for the number of dwi fatalities per 100,000 population as of 2008 population records. However, New Mexico as a western state still has a long way to go in reducing dwi fatalities and injuries.

The AOC notes existing law that authorizes some relief to four (or more)-time DUI offenders by providing a mechanism to restore driver's licenses. Such a person may apply under current Section 66-5-5 (D) NMSA 1978 to any district court for restoration of a driver's license, and the court, upon good cause being shown, may order restoration, provided that the person has not been subsequently convicted of DUI.

Finally, the NMCD calls attention to two other ramifications of expungement:

Individuals who have their convictions expunged and then thereafter drink and drive and again enter the criminal justice system would appear to have no obligation to tell their treatment providers about this conviction. This could make treatment and recovery more difficult.

Employers have the obligation to hire qualified individuals, and to generally avoid making negligent hires. This bill provides no civil protection to those employers (state or private) who hire a person with an expunged DWI conviction who then, for example, drinks and drives while on duty and kills or injures someone.