

HB370



Bill Analysis 2019 Regular Session

SPONSOR: Representative Antonio Maestas

SHORT TITLE: Expungement of Criminal Records

SYNOPSIS OF BILL: HB370 allows a petitioner to have public access restricted to certain arrest records, including records involving identity theft or for wrongful arrest, indictment or charge. The bill also allows for expungement of certain misdemeanor and felony convictions after a waiting period has lapsed. When a person has been released without conviction for an ordinance violation, misdemeanor, or felony charge, they may petition for expungement one year after dismissal. HB 370 creates certain exceptions for crimes against children, sex offenses, DUIs, and offenses causing great bodily harm or death. HB370 requires a petitioner seeking to expunge a conviction to provide notice of an opportunity to object to the district attorney, DPS, and the arresting agency. In ruling on the petition to expunge a conviction, HB370 would require the court to consider certain factors, such as the age and nature of the charges, the state's reasons for keeping the record public, and specific adverse consequences faced by the petitioner should the record remain public. If granted, HB370 allows the petitioner to respond to an inquiry that "no record exists."

STRENGTHS: Millions of Americans are impacted by a complex web of literally thousands of statutes, rules, and regulations that govern many aspects of life for people with a criminal record. These rules often combine to create permanent barriers for people that have long ago paid their debt to society. New Mexico is one of only a handful of states¹ that do not allow any real criminal records expungement for adults (there is a technical exception for a misdemeanor charge where no record of the disposition of the case may be found). Collateral consequences have the effect of marginalizing and punishing entire families and communities through limited access to meaningful employment, adequate housing, occupational licenses, volunteer opportunities, and educational opportunities.

- Approximately 1 in 3 adults, or 65 million Americans, have a criminal record.²
- New Mexico has the fourth highest rate of incarcerated or formerly incarcerated parents.³
- Collateral Consequences have become more pervasive and more problematic in the past 20 years for three reasons: they are more numerous and impactful, they affect more people, and they are harder to avoid or mitigate. As a result, millions of Americans are consigned to a kind of a permanent legal limbo because of a crime they committed in the past.⁴

Safer	Apolitical	Fiscally-Responsible	Evidence Based	Grade
<p>Reducing recidivism and increased access to housing, education and employment opportunities makes communities safer. Collateral consequences of a criminal record impact not only individuals, but their entire families and communities.</p>	<p>Three pieces of expungement legislation in the last ten years have passed both chambers with broad, bipartisan support. Each bill was vetoed by the Governor (Richardson vetoed SB 599 in 2007; Martinez vetoed SB2 in 2012, and SB294 in 2013). The legislation is apolitical; the veto response thus far from both governors has been politically driven to demonstrate a “tough on crime” mentality.</p>	<p>The FIR correctly points out that additional funding for the courts may be required due to an increase in hearings for people seeking expungement, although the office of the Public Defender would likely play no role in expungement hearings. The more relevant fiscal analysis should focus on the increased opportunity for employment, housing, and education that expungement would bring for many people and their families in New Mexico.</p>	<p>Employers routinely use criminal background checks as part of the hiring process.⁵ Despite guidance from the EEOC⁶ that blanket bans on hiring people with criminal records are per se discriminatory under Title VII of the Civil Rights Act, these bans by employers are commonplace.² Studies show that providing individuals the opportunity for stable employment actually lowers crime recidivism rates and thus increases public safety.²</p>	<p>A</p>

¹*Collateral Consequences Resource Center*, <http://ccresourcecenter.org/resources-2/restoration-of-rights/50-state-comparisonjudicial-expungement-sealing-and-set-aside/>.

²*65 Million Need Not Apply*, National Employment Law Project, http://nelp.3cdn.net/e9231d3aee1d058c9e_55im6wopc.pdf.

³*A Shared Sentence*, Annie E. Casey Foundation, <http://www.aecf.org/m/resourcedoc/aecf-asharedsentence-2016.pdf>.

⁴*National Inventory of the Collateral Consequences of Conviction*, Council of State Governments, <https://niccc.csjusticecenter.org/>.

⁵*Background Checking – The Use of Criminal Background Checks in Hiring Decisions*, Society of Human Resources Management, <https://www.shrm.org/hr-today/trends-and-forecasting/research-and-surveys/pages/criminalbackgroundcheck.aspx>

⁶*EEOC Enforcement Guidance*, https://www.eeoc.gov/laws/guidance/arrest_conviction.cfm