



**Colorado
Legislative
Council
Staff**

HB16-1265

FISCAL NOTE

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 16-1021 **Date:** March 2, 2016
Prime Sponsor(s): Rep. Melton; Esgar **Bill Status:** House Judiciary
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: EXPUNGE ARREST RECORDS BASED ON MISTAKEN IDENTITY

Fiscal Impact Summary	FY 2015-2016 (current year)	FY 2016-2017	FY 2017-2018
State Revenue			
State Expenditures	Minimal workload increase.		
Appropriation Required: None.			
Future Year Impacts: Ongoing minimal workload increase.			

Summary of Legislation

This bill requires the court to expunge the arrest and criminal records of a person who was arrested as a result of mistaken identity and who did not have charges filed against him or her. Law enforcement agencies are required to petition the relevant court within 90 days of completing an investigation that determines there was a mistaken identity and no charges were filed. The court then has 90 days to expunge the record and order other agencies that have custody of such records to do the same. Under the bill, the petitioner is responsible for providing copies of the order to the Colorado Bureau of Investigation (CBI) and any other agencies that have custody of records. In the case of a private custodian, the petitioner must also send the notice electronically. After the records are expunged, the court may issue an order sealing the civil case.

Employers; educational institutions; and state and local government agencies, officials, and employees (entities) may not ask applicants to disclose information in any expunged record. Applicants can respond to questions about prior arrest and criminal records related to a case of mistaken identity as if these records do not exist. Applicants may not be denied solely on the basis of having refused to provide information about expunged records.

Background

There is no filing fee for an expungement as it is typically performed during the judicial proceeding. If expungement occurs after the proceeding, there is no filing fee for a request made by a law enforcement agency.

State Expenditures

Beginning in the current fiscal year, FY 2015-16, this bill increases workload for state agencies. These impacts are assumed to be minimal and are not expected to require an increase in appropriations for any state agency.

Judicial Department. Petitions for expungement required under HB16-1265 will be heard in a district court, which will increase trial court workload.

Department of Personnel and Administration. Workload will increase for the Division of Human Resources to provide technical guidance to state agencies and for the Colorado State Archives to expunge any records as directed by the court.

State agencies with law enforcement personnel. The Departments of Corrections, Law, Natural Resources, Public Safety and Revenue, as well as institutions of higher education, have peace officers on staff. To the extent that personnel of any of these agencies arrest persons and are later required to prepare and file a petition to have those records expunged due to mistaken identity, workload will increase. Workload will also increase to expunge records following a court's order. For example, the CBI will be required to seal any arrest records.

Other state agencies. All state agencies, including institutions of higher education, are required to comply with the prohibition against asking applicants to disclose information in any expunged record. As such, policies and forms may be required to be updated to ensure that this information is clear to both employees and applicants.

Local Government Impact

This bill increases workload for local law enforcement agencies to petition a district court to expunge the record when a person was arrested as a result of mistaken identity and did not have charges filed against him or her. Following a district court's order to expunge any such records, any local law enforcement, municipal court, or county court that has records related to that order must expunge them. These workload increases are assumed to be minimal.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State and Local Government Contacts

All Departments
Municipalities

Counties
Sheriffs

District Attorneys
Special District Association