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**FISCAL IMPACT STATEMENT**

**LS 7400**

**BILL NUMBER:** HB 1709

**NOTE PREPARED:** Jan 26, 2007

**BILL AMENDED:**

**SUBJECT:** Expungement of Arrest Records.

**FIRST AUTHOR:** Rep. Herrell

**BILL STATUS:** As Introduced

**FIRST SPONSOR:**

**FUNDS AFFECTED:** X GENERAL  
DEDICATED  
FEDERAL

**IMPACT:** State & Local

**Summary of Legislation:** This bill has the following provisions:

- A. It provides that an individual may and a prosecuting attorney shall petition a court to expunge an individual's arrest record under certain circumstances. (Current law requires an individual to petition a court to expunge an arrest record.)
- B. It requires a court to order an arrest record be expunged if the individual is acquitted or if the court dismisses a criminal indictment or information.
- C. It allows an individual to petition the court to expunge an arrest record for an arrest that occurred before July 1, 2007.
- D. It requires the division of state court administration to develop a form for an individual to file a pro se petition to expunge an arrest record.

**Effective Date:** July 1, 2007.

**Explanation of State Expenditures:** *Pro Se Petition Form* – The Division of State Court Administration should be able to perform this task with their current level of staff and resources.

**Explanation of State Revenues:** *Expunging an Arrest Record That Occurred Before July 1, 2007* – A person wishing to file a petition for expunging all arrest records would be required to pay a filing fee of \$100, 70% of which would be deposited into the state General Fund.

**Explanation of Local Expenditures:** *Petitioning for Expungement* – This bill would affect both the prosecuting attorney and the courts in each county. This is because the prosecuting attorney would be

required to file petitions for expungement for persons who were arrested for certain crimes but who the prosecuting attorney did not file a criminal case against for one of several reasons. The courts would have to review the petitions and either summarily accept or reject the petition or schedule a hearing. The additional work that this new requirement would place on the local courts and prosecuting attorney's offices will depend on the following factors:

- the number of petitions that would be filed;
- how busy the courts are currently (as measured by the utilization rate);
- whether these cases would require a hearing; and
- whether each court has enough legal and clerical staff to file the petitions and review the filings.

While counties with smaller populations will generally have fewer arrests and criminal filings, some have high utilization rates and limited staff. Counties with larger populations will have more arrests and more petitions to file and review, but potentially more clerical and legal staff and better office technology.

The number of petitions for expungement are reportedly infrequent, but if the prosecuting attorneys are required to file petitions for expungement in certain cases, then the volume of filings for expungement will increase. Published information on criminal prosecutions is limited to the number of criminal cases filed by the prosecuting attorney in court. Statewide information on the number of arrests is not kept in published form. Information is also not available on the percentage of cases that are dropped because of mistaken identity, because no offense was in fact committed, or because there was absence of probable cause.

To estimate the percentage of arrests that are prosecuted and dropped, LSA compared the number of arrests in Marion County that were reported in the Marion County JUSTIS system with the number of criminal filings in Marion County's courts between 2002 and 2005.

<b>Percent Filings to Arrests in Marion County, 2002 Through 2005</b>					
	Felony A	Felony B	Felony C	Felony D	Misdemeanors
Arrests Leading to Court Filing	38%	32%	33%	42%	63%
Arrests Presumably Dropped	62%	68%	67%	58%	37%

LSA assumed that of the total arrests that are dropped, half are dropped for one of the following reasons:

- mistaken identity
- no offense was committed
- absence of probable cause
- the conviction was vacated and the state is not permitted to re-file charges or
- the prosecuting attorney is barred because charges have not been filed in a timely manner.

It also assumed that the same proportion of arrests would be dropped in all 92 counties.

Based on this assumption and the number of criminal filings reported in each county in CY 2005, the following table compares the following:

- the number of arrests that were presumably dropped for which the office of the prosecuting attorney would be required to petition for expungement on a weekly basis
- the utilization rates of the existing courts in the same county.

When comparing the added petitions to be filed with the utilization rates of the courts in 2005, LSA estimates that this new requirement would have a low to moderate impact on 58 counties, and a moderate to high impact on the remaining 34 counties.

<b>Estimated Impact on Prosecuting Attorneys and Courts</b>				
Utilization Rate of Courts				
	<u>Low</u>	<u>Average</u>	<u>High</u>	<u>Grand Total</u>
Between 350 and 375		1		1
Between 150 and 175		1		1
Between 50 and 100		1	5	6
between 21 and 49		7	7	14
Between 11 and 20	5	8	10	23
10 or less	<u>24</u>	<u>21</u>	<u>2</u>	<u>47</u>
Grand Total	29	39	24	92

Under current law, when an individual petitions for an expungement of an arrest, the court can summarily grant the petition, set the matter for a hearing, or deny the petition without a hearing. Presumably, if the prosecuting attorney files for expungement, the court will most likely summarily grant the petition.  
Position for Expunging Weekly

**Explanation of Local Revenues:** *Petition to Expunge an Arrest Record* – If petitions are filed in court for expungement, the local units of government would receive 30% of the filing fee.

**State Agencies Affected:** Division of State Court Administration; Indiana State Police.

**Local Agencies Affected:** Prosecuting attorneys; Trial courts with criminal jurisdiction; Local law enforcement agencies.

**Information Sources:** Marion County JUSTIS system, *Indiana Judicial Report 2005*.

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