



SOUTH CAROLINA REVENUE AND FISCAL AFFAIRS OFFICE
STATEMENT OF ESTIMATED FISCAL IMPACT
 (803)734-0640 • RFA.SC.GOV/IMPACTS

Bill Number: S. 0255 As signed by the Governor on February 16, 2016
Author: Thurmond
Subject: Destruction of Booking and Arrest Records
Requestor: Senate
RFA Analyst(s): Gardner and Wren
Impact Date: December 12, 2016

Estimate of Fiscal Impact

| | FY 2016-17 | FY 2017-18 |
|----------------------------------|-------------------|-------------------|
| State Expenditure | | |
| General Fund | \$0 | \$0 |
| Other and Federal | \$0 | \$0 |
| Full-Time Equivalent Position(s) | 0.00 | 0.00 |
| State Revenue | | |
| General Fund | \$0 | \$0 |
| Other and Federal | \$0 | \$0 |
| Local Expenditure | Undetermined | \$0 |
| Local Revenue | \$0 | \$0 |

Fiscal Impact Summary

This bill is not expected to significantly impact State expenditures. All agencies surveyed indicated that either the costs associated with implementation would be minimal and could be absorbed, or that there would be no cost to the agency. This bill will have no state revenue impact. Because of the variation in and limited number of responses from local governments, the expenditure impact on local governments is undetermined.

Explanation of Fiscal Impact

Explanation of Amendment by the House of Representatives on June 3, 2015

State Expenditure

This bill relates, in part, to the disposition of arrest and booking records for persons who are granted an expungement because they are found not guilty, or their cases were nolle prossed. Under existing law, law enforcement and prosecution agencies must retain arrest and booking records under seal for three years and one hundred twenty days from the date of an expungement, with some exceptions. The bill requires retention of the records indefinitely by law enforcement and prosecution agencies for administrative hearings. The bill provides for an exception to the record retention period defined in this section, in that records required by detention and correctional facilities to address an action, complaint, or inquiry may be kept as needed. The bill removes a prohibition on expungement for certain driving and wildlife violations, and makes provisions about the destruction and retention of records after expungement applicable to violations of municipal and county ordinances. The bill requires a person or entity who publishes on the Internet the arrest and booking records of a person, whose charges have been discharged or dismissed, to remove these records within thirty days of a

written request and establishes penalties for failure to comply with this provision. Further, the bill amends Section 17-22-950 to provide that the summary court will issue an expungement for accused persons who were fingerprinted for the charges and were found not guilty or whose cases were nolle prossed, and to provide that accused persons who were not fingerprinted for the charges and were found not guilty or whose cases were nolle prossed may apply to the summary court, at no cost to them, for an order to expunge their criminal records. The bill also requires criminal charges expunged pursuant to this section to be removed from all Internet-based public records within thirty days of the disposition date.

Department of Public Safety. The agency indicates this bill will have no impact on the General Fund, Federal Funds, or Other Funds.

Department of Corrections. The agency indicates this bill will have no impact on the General Fund, Federal Funds, or Other Funds.

Judicial Department. It is anticipated that additional hearings may be held in circuit court due to the creation of criminal offenses and new civil causes of action. There is no data available to indicate the number of additional hearings which may result, as the offense and civil cause of action are new additions. The department expects that it will be able to absorb any additional costs. Should this legislation result in a significant number of additional hearings, it could result in an increased backlog for the circuit court.

South Carolina Law Enforcement Division. Effective June 9, 2014, Section 17-1-40 was revised to include language that authorizes law enforcement and prosecution agencies to retain a person's arrest and booking records, associated bench warrants, mug shots, and fingerprints under seal for three years and one hundred twenty days. Existing law requires law enforcement to retain records indefinitely for the purposes of ongoing or future investigations. The bill enables law enforcement and prosecution agencies to also retain records indefinitely for administrative hearings. The bill requires businesses in South Carolina to remove criminal information from their websites within thirty days of receipt of a written request by a person whose charge has been dismissed. SLED provides the capability of ordering criminal background check information through its website, Citizens Access to Criminal Histories (CATCH). The agency states that meeting a thirty (30) day turnaround time may require some staff overtime, but it anticipates being able to absorb any associated costs within current resources. The agency also indicates that some effort will be required to comply with Section 17-1-40(B)(4), which requires SLED, at the discretion of the solicitor, to request that a person's record contained in the National Crime Information Center (NCIC) database or other similar database reflect the lesser included offense rather than the offense originally charged. The agency states it can absorb any costs associated with this provision within current resources.

State Revenue

Pursuant to Section 17-22-940 and Fiscal Year 2016-17 proviso 62.13, the South Carolina Law Enforcement Division (SLED) is authorized to collect a \$25 fee for each request to expunge a criminal record, except when the request is to expunge records of charges that were not prosecuted or the accused was found not guilty. Therefore, SLED does not anticipate any loss of revenue as a result of this bill.

Local Expenditure

It is anticipated that additional hearings may be held in magistrate courts due to the creation of criminal offenses and new civil causes of action. Any additional costs to the magistrate courts would be borne by the counties. As such, the Revenue and Fiscal Affairs Office contacted twenty-three county governments and the Municipal Association of South Carolina regarding the expenditure impact of this bill as amended. Cherokee County indicates that this bill will have an expenditure impact of \$50,000 for personnel and programming expenses. Florence County indicates that the only impact would be the original programming to automatically remove files as required by the provisions of this bill but cannot place a dollar amount on the expenses. Oconee County indicates that this bill would have no impact on their locality. Due to the limited number and variation of the responses received from the surveyed counties, the expenditure impact on county governments is undetermined. The Municipal Association indicates that this bill could have a minimal impact on municipal governments.

Local Revenue

N/A

Explanation of Bill Filed December 10, 2014

State Expenditure

Senate Bill 255 provides that a person/entity publishing on his/its website the arrest and booking record(s) of a person whose legal charges have been discharged or dismissed, or of a person who is found not guilty of a charge, shall, without fee or compensation, remove the arrest and booking record(s) within thirty days of receipt of a written request for removal. The bill also establishes penalties for violations.

Department of Public Safety. The agency indicates this bill will have no impact on the General Fund, Federal Funds, or Other Funds.

Judicial Department. It is anticipated that additional hearings may be held in Common Pleas and Magistrates courts due to the creation of a new legal offense and new civil cause of action. There is no data available to indicate the number of additional hearings which may result, as the offense and civil cause of action are new additions to this section of law. It is presumed that any additional costs will be absorbed by the agency. Should this legislation result in a significant number of additional hearings, it could result in an increased backlog for the Common Pleas and Magistrate courts. Any additional costs to the Magistrate courts would be borne by the counties.

South Carolina Law Enforcement Division. Pursuant to Section 17-22-940 and Fiscal Year 2015 Proviso 62.13, SLED is authorized to collect a twenty-five dollar fee for each request to expunge a criminal record. However, no fee may be charged when an expungement is sought pursuant to Section 17-1-40. Therefore, SLED does not anticipate any loss of revenue due to the revision of this section of law. Effective June 9, 2014, Section 17-1-40 was revised to include language that authorizes law enforcement and prosecution agencies to retain a person's arrest and booking records, associated bench warrants, mug shots, and fingerprints under seal for three years and one hundred twenty days. The current legislation will force law enforcement to retain records indefinitely for the purposes of ongoing or future investigations. Senate Bill 255 appears

to change Section 17-1-40 in its entirety by eliminating this requirement, which will affect SLED's recent reprogramming of its internal database to meet the existing retention guidelines. The additional verbiage in the bill requires businesses in South Carolina to remove criminal information from their websites within thirty days of receipt of a written request by a person whose charge has been dismissed. SLED provides the capability of ordering criminal background check information through its website, Citizens Access to Criminal Histories (CATCH). However, the agency states that meeting a thirty (30) day turnaround time may be challenging with current resources.

State Revenue

N/A

Local Expenditure

The Revenue and Fiscal Affairs Office surveyed the Municipal Association of South Carolina and thirteen county governments. Responses were received from both the Municipal Association and Charleston County. The Municipal Association reports this bill will have no impact on municipalities. Charleston County indicates costs will be minimal.



Frank A. Rainwater, Executive Director