


Colorado Legislative Council Staff Fiscal Note
STATE
REVISED FISCAL IMPACT
(replaces fiscal note dated April 8, 2008)

Drafting Number: LLS 08-0404	Date: April 28, 2008
Prime Sponsor(s): Rep. Ferrandino Sen. Bacon	Bill Status: Senate Judiciary
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TITLE: CONCERNING THE SEALING OF CRIMINAL JUSTICE RECORDS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
State Revenue		
General Fund	\$116,160	\$116,160
Cash Funds - Judicial Stabilization Cash Fund	314,600	314,600
State Expenditures		
Cash Funds		
Fees	\$36,893	\$33,783
Judicial Stabilization Cash Fund	445,781	360,785
FTE Position Change	7.1 FTE	7.1 FTE
Effective Date: July 1, 2008		
Appropriation Summary for FY 2008-2009: See the State Appropriations section.		
Local Government Impact: None.		

The fiscal note has been revised to reflect changes made in the House

Summary of Legislation

Background. Current law allows individuals to petition the court to seal arrest and criminal records information (except for basic identification information) for offenses in which:

- the individual was not charged;
- the case was completely dismissed; or
- the individual was acquitted.

A petition to seal the records of offenses that were not charged or were dismissed due to a plea agreement in a separate case may be filed 15 years or more after the disposition of the case, provided the individual has not been charged for any criminal offense in the intervening 15 years. Records of most traffic offenses and infractions may not be sealed.

HB 08-1082. This bill, *as amended in the House*, reduces the waiting time required for petitioning the court to seal records for an offense that was not charged or was dismissed due to a plea agreement in a separate case from 15 to 10 years. The bill requires a probation department in certain circumstances to advise a defendant of his or her right to seal criminal justice records.

The bill expands the provisions for sealing criminal justice records (except for basic identification information) to certain conviction records. Under the bill, a defendant may petition the court to seal certain conviction records 10 or more years after the completion of the sentence in a case, provided the defendant has not been charged for any criminal offense in the intervening 10 years. The bill specifies the procedure for sealing conviction records, including factors to be considered by the judge. Entire cases must be sealed, rather than individual charges within a case. Following a conviction, the court and the defendant's probation officer (when appropriate) are required to advise the defendant of his or her rights concerning the sealing of conviction records, including the procedure for doing so.

The regular filing fee of \$156 for all civil cases, plus an additional new fee of \$200 for actual costs related to petitioning to seal conviction records (credited to the Judicial Stabilization Cash Fund), must be paid by the defendant. Additionally, the defendant is required to pay to the Colorado Bureau of Investigation (CBI) any costs related to the sealing of his or her criminal records that are in the custody of the CBI.

An order sealing conviction records does not vacate a conviction and will not deny access to those records by any party or agency required by law to conduct a criminal background check on the defendant. The bill clarifies the circumstances under which criminal justice agencies may view sealed records. Criminal justice agencies that are in possession of sealed conviction records when an inquiry is made by another criminal justice agency are exempt from the requirement to hold such records confidential. The bill prohibits employers (except criminal justice agencies), state and local government agencies and officials, landlords, and employees from requiring an applicant to disclose information contained in sealed conviction records. The bar committee of the Colorado State Board of Law Examiners is permitted to make further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means.

The bill allows records to be unsealed in the event that the defendant is convicted of a subsequent criminal offense. Additionally, a member of the public may petition the court to unseal records if it can be shown that circumstances have substantially changed since the order sealing the records was issued.

Records of convictions for most misdemeanor offenses, petty offenses, offenses against municipal ordinances, and class 5 and class 6 felonies involving controlled substances may be sealed. The bill does not allow for the sealing of records of conviction for the following misdemeanor offenses:

- unauthorized sale of insurance;
- offenses associated with the Colorado Fair Debt Collection Act;
- false imprisonment;
- most traffic offenses or infractions;
- sexual offenses;
- fraudulent sales or business practices;
- child abuse;
- neglect of an at-risk adult or at-risk juvenile;
- offenses involving obscenity;

- escape from custody;
- bribery, abuse of public office, and perjury; and
- offenses relating to firearms and weapons.

The bill specifies that the conviction records sealing procedures will apply to convictions occurring on or after July 1, 2008. It allows records for convictions entered prior to that date to be sealed with the consent of the prosecutor. Finally, the bill clarifies that sealing records does not limit the rules of evidence or discovery.

State Revenue

Table 1 shows that state revenues will increase by an estimated \$430,760 per year beginning in FY 2008-09. A new \$200 fee associated with petitions to seal conviction records accounts for \$242,000 of the total, while the remaining \$188,760 comes from the current filing fee of \$156 for all civil cases. In total, the bill is expected to generate \$314,600 in revenue to the Judicial Stabilization Cash Fund and \$116,160 in revenue to the General Fund each year.

Table 1. Estimated Revenue Under HB 08-1082		
	FY 2008-09	FY 2009-10
Estimated New Filings	1,210	1,210
New Filing Fee = \$200 (Judicial Stabilization Cash Fund)	\$242,000	\$242,000
Current Filing Fee = \$96 Applied to New Petitioners (General Fund)	\$116,160	\$116,160
Current Filing Fee = \$60 Applied to New Petitioners (Judicial Stabilization Cash Fund)	\$72,600	\$72,600
TOTAL	\$430,760	\$430,760

State Expenditures

Corrections. The bill requires parole officers to notify defendants of their rights concerning the sealing of records associated with dismissed cases and conviction records. The Department of Corrections will incorporate the notification into the existing parole discharge process, which will result in no measurable increase in costs or staff time.

Judicial. The Judicial Branch expects to see a significant number of new cases filed as a result of this bill. Petitions to seal records for *dismissed* cases are not expected require any additional resources, but petitions to seal *conviction* records are expected to increase costs for the branch by \$445,781 in FY 2008-09 and \$360,785 in FY 2009-10, including the costs associated with an additional 6.2 FTE.

In FY 1998-99, the earliest for which electronic data are available, 167,778 convictions were entered by Colorado courts. Given the offenses excluded by the bill, 40,331 of those cases would be eligible for petition. Assuming that 3 percent of those defendants will file petitions, the trial courts will have 1,210 new cases filed as a result of this bill. The costs associated with these new cases assume that each petition will require 90 minutes of a magistrate's time, plus associated staff support, resulting in an additional 5.2 FTE necessary for the trial courts. An additional 1.0 FTE for a management analyst is required for the branch to determine which entities are statutorily authorized to conduct criminal history checks involving sealed records. First-year costs also include standard capital outlay.

Probation officers are required to provide a written advisement regarding the sealing of records upon dismissal of a case or termination from probation. Assuming that the requirement only applies to defendants who are physically available to the probation officer at the time of termination, costs will not significantly increase. If, however, written advisement must be provided for every defendant terminated from probation, the Judicial Branch would incur additional costs.

Public Safety. The procedure for sealing criminal records requires the petitioner to request a Colorado criminal history record from the CBI in the Department of Public Safety. Upon receipt of a court order to seal records, the CBI will seal all relevant records in its custody. The defendant is required to pay any costs associated with sealing the records. The department expects the court-ordered sealing of records to take approximately 1.5 hours per request. Given the estimate of 1,210 new petitions filed the Department of Public Safety will require an additional 0.9 FTE. The total cost to the department is \$36,893 in FY 2008-09 and \$33,783 in FY 2009-10, which will be cash funds.

Expenditures Not Included

Pursuant to a Joint Budget Committee policy, funding for the items noted below will not be included in fiscal note expenditure estimates. However, indirect costs are calculated for the purpose of identifying the "per applicant" cost of a new or revised fee to reflect the total direct and indirect costs required to support a particular program.

- group health, life and dental insurance
- inflation indices
- amortization equalization disbursements
- supplemental amortization equalization disbursements
- short-term disability
- leased space
- indirect costs

State Appropriations

For FY 2008-09, HB 08-1082 appropriates \$455,679 from the Judicial Stabilization Cash Fund to the Judicial Branch and \$36,893 cash funds from fees to the Department of Public Safety. The fiscal note indicates the following appropriations necessary under the bill:

Judicial Branch	Amount
Cash Fund - Judicial Stabilization Cash Fund	\$445,781 6.2 FTE
Department of Public Safety	Amount
Cash Funds - Fees	\$36,893 0.9 FTE

Departments Contacted

Corrections Judicial Public safety