



Colorado Legislative Council Staff Fiscal Note
**STATE and LOCAL
 FISCAL IMPACT**

Drafting Number: LLS 07-0358
Prime Sponsor(s): Rep. Cerbo

Date: January 29, 2007
Bill Status: House Judiciary
Fiscal Analyst: Chris Ward (303-866-5834)

TITLE: CONCERNING THE SEALING OF CRIMINAL JUSTICE RECORDS.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue		
General Fund	\$1,112,020	\$1,112,020
Cash Fund	549,900	549,900
State Expenditures		
General Fund	\$8,418,119	\$6,871,642
FTE Position Change	129.0 FTE	129.0 FTE
Effective Date: July 1, 2007		
Appropriation Summary for FY 2007-2008: See State Appropriations section.		
Local Government Impact: Increased county costs for district attorneys.		

Summary of Legislation

The bill expands the ability of people involved in criminal cases to petition the courts to request that records related to those cases be sealed. For records related to an offense that was not charged or a case that was dismissed due to a plea agreement in a separate case, the bill reduces the time that a person must wait before filing a petition from 15 years to 10 years.

The bill also extends the procedures for sealing arrest and criminal records to certain convictions. After 10 years following the completion of a sentence or release from supervision, whichever is later, a person convicted of certain crimes may petition the district court to seal the conviction records. The procedure would apply prospectively to any convictions entered on and after July 1, 2007. But, it may also be used for convictions entered between July 1, 1988, and July 1, 2007, with the consent of the prosecuting attorney and subject to rules established by the Colorado Supreme Court.

The bill sets forth procedures for sealing conviction records. It requires a defendant to be advised of the right to seal conviction records by the court, the probation department, and the defendant's parole officer under certain circumstances. It also prohibits the sealing of conviction records if the defendant still owes court-ordered restitution, fines, or fees. In making the decision whether to seal conviction records, the court must weigh the privacy interests of the petitioner against the public interest in retaining the conviction records.

Employers and certain institutions and agencies would be prohibited from requiring an applicant to disclose information in sealed conviction records. However, the bill permits the State Board of Law Examiners to make inquiries into the fact of a conviction that comes to the board's attention through other means. The provisions of the bill would not apply to the sealing of conviction records for traffic offenses and infractions, any offense with an underlying factual basis involving unlawful sexual behavior, and crimes involving specified special circumstances for which enhanced sentencing is required. The bill also specifies that court orders sealing conviction records shall not limit the operation of discovery rules in civil cases.

State Revenue

The bill increases the likelihood of civil filings, which will also increase state revenue from filing fees. Assuming 12,220 new civil filings, as described below, the bill will generate **\$1,661,920** in new fee revenue in FY 2007-08. The civil filing fee for district court is \$136, including \$91 that is credited to the General Fund and \$45 that is credited to the Judicial Stabilization Cash Fund.

State Expenditures

The bill is expected to increase costs for the Judicial Branch by over **\$8.4 million in FY 2007-08**, including costs associated with an additional 129.0 FTE. Beginning in FY 2008-09, the bill is expected to increase Judicial Branch costs by \$6,871,642 and 129.0 FTE. These costs are shown in Table 1 and described in greater detail below.

Table 1. Estimated Expenditures Under HB 07-1107		
Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$6,699,883	\$6,699,883
FTE	131.0	131.0
Operating Expenses	\$171,759	\$171,759
Capital Outlay	\$1,546,478	\$0
TOTAL	\$8,418,120	\$6,871,642

Trial Courts. The bill expands the population of people who may seek to petition the court to have criminal records sealed. First, it reduces the time required to wait before petitioning the court to seal arrest records. Second, it allows people convicted of certain crimes to petition the court to seal records related to the conviction. The first year would likely see the largest volume of filings and could generate as many as 12,220 new cases, including 6,452 cases involving a conviction and 5,768 cases where a person was not charged or the charges were dismissed due to a plea agreement in a separate case. Each case would require review by a magistrate, and each magistrate would require staff support from court clerks and others. In total, the Judicial Branch would need \$8,549,366 and 131.0 FTE beginning in FY 2007-08 in order to handle the initial volume of cases. The estimated cost of this bill is based on the following facts and assumptions:

Sealing Conviction Records - In FY 1998, the earliest year for which electronic data is available, there were 167,778 convictions entered, including 110,162 convictions that are clearly excluded from the sealing provisions of the bill and 59,268 convictions that could potentially be covered by the bill. It is assumed that 70 percent of the potential cases (40,331) relate to offenses for which a person could petition to have records sealed under the bill. Based on the current number of petitions requesting that records be sealed, it is assumed that 8 percent of eligible cases (3,226) per year would result in a petition being filed in district court. The bill covers a 20-year period from July 1, 1988 to July 1, 2007, and the branch is expected to accept 2 years' worth of petitions each year for 10 years in order to handle the 20-year backlog. Thus, the branch would expect to see 6,452 new cases per year for the next 10 years.

Sealing Arrest Records - In FY 1997, the earliest year for which arrest records could be sealed, there were 102,992 criminal cases filed in state courts, including 33,867 felony cases and 69,125 misdemeanor cases. (This total excludes cases filed in Denver District Court.) It is assumed that 70 percent of these cases (72,094) relate to offenses for which a person could petition to have records sealed under the bill. Based on the current number of petitions requesting that records be sealed, it is assumed that 8 percent of eligible cases (5,768) would result in a petition being filed in district court.

Probation. The impact identified above relates to trial courts, but the bill also establishes a new requirement for probation officers to advise defendants on probation of their right to have criminal records sealed in certain cases. This requirement should not significantly increase costs for probation assuming that the requirement only applies when the defendant is physically available to the probation officer when probation is terminated. If, however, written advisement must be provided to each defendant terminated from probation, the Judicial Branch would incur additional costs.

Local Government Impact

The bill will affect the workload of district attorneys which will increase county costs, although the actual cost to counties has not been estimated.

State Appropriations

This fiscal note implies that the Judicial Branch would require a General Fund appropriation of \$8,418,120 and 129.0 FTE for FY 2007-08.

Departments Contacted

District Attorneys

Judicial

Public Safety