

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

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

Date: June 18, 2007
Bill Status: Vetoed by Governor
Fiscal Analyst: Chris Ward (303-866-5834)

TITLE: CONCERNING THE SEALING OF CRIMINAL JUSTICE RECORDS, AND MAKING AN APPROPRIATION IN ACCORDANCE THEREWITH.

Fiscal Impact Summary	FY 2007-2008	FY 2008-2009
State Revenue		
General Fund	\$183,456	\$183,456
Cash Fund - Judicial Stabilization Cash Fund	493,920	493,920
State Expenditures		
Cash Fund - Judicial Stabilization Cash Fund	\$455,679	\$354,819
FTE Position Change	6.5 FTE	6.5 FTE
Effective Date: The bill was vetoed by the Governor on June 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, if the prosecuting attorney does not object and the applicant pays a fee to cover the costs.

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.

In setting forth procedures for sealing conviction records, the bill 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. A petition must specify each custodian to whom the sealing order is directed and be accompanied by a verified copy of the petitioner's criminal history. 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.

Petitions filed in district court to seal conviction records must be posted on the website of the State Court Administrator for 30 days and no such petition may be granted until 30 days after the posting. Any member of the public may petition the court to unseal records that were previously sealed by showing that new circumstances exist since the original sealing that make the public interest in disclosure now outweigh the subject's interest in privacy.

Certain employers, 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 bill also specifies that court orders sealing conviction records shall not limit the operation of discovery rules in civil cases.

State Revenue

State revenues would increase by an estimated \$677,376 per year beginning in FY 2007-08, as shown in Table 1. Of the total, \$403,200 would be from the application of a new \$200 filing fee for petitions to seal records and \$274,176 would be from the application of current filing fees.

Table 1. Estimated Revenue Under HB 07-1107		
	FY 2007-08	FY 2008-09
Estimated New Filings	2,016	2,016
New Filing Fee = \$200 (Judicial Stabilization Cash Fund)	\$403,200	\$403,200
Current Filing Fee = \$91 Applied to New Petitioners (General Fund)	\$183,456	\$183,456
Current Filing Fee = \$45 Applied to New Petitioners (Judicial Stabilization Cash Fund)	\$90,720	\$90,720
TOTAL	\$677,376	\$677,376

In total, the bill is expected to generate \$493,920 per year in revenue to the Judicial Stabilization Cash Fund and \$183,456 per year in revenue to the General Fund. A new filing fee of \$200 is assumed in order to cover the actual costs related to petitions to seal records over roughly

a 2-year period. This estimate assumes 2,016 petitions are filed per year, although the courts would likely see more than this volume in the initial year. It should be noted that the fee appears to only apply to convictions prior to July 1, 2007, but not to convictions after that date.

State Expenditures

Petitions to seal *arrest* records will not likely require additional resources, but reviewing petitions to seal *conviction* records is expected to increase costs for the Judicial Branch by **\$455,679 per year** beginning in FY 2007-08, including costs associated with an additional 6.5 FTE. These costs are shown in Table 2 and described in greater detail below.

Cost Components	FY 2007-08	FY 2008-09
Personal Services	\$343,794	\$343,794
FTE	6.5	6.5
Operating Expenses	\$11,025	\$11,025
Capital Outlay	\$100,860	\$0
TOTAL	\$455,679	\$354,819

Trial Courts. The bill expands the population of people who may seek to petition the court to have criminal records sealed. In FY 1998, the earliest year for which electronic data is available, there were 167,778 convictions entered, including an estimated 40,331 convictions that 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 the bill could generate 2,016 (5 percent) per year would result in a petition being filed in district court. The costs associated with these 2,016 cases assume that each petition will require 90 minutes for a magistrate, plus associated staff support, in addition to 30 minutes for a court clerk. First-year costs also include standard capital items.

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 may affect the workload of district attorneys, but requires that petitioners pay a fee to cover any costs.

State Appropriations

Consistent with this fiscal note, the bill appropriates \$455,679 and 6.5 FTE from the Judicial Stabilization Cash Fund to the Judicial Branch for FY 2007-08.

Departments Contacted

District Attorneys

Judicial

Public Safety