

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

**Drafting Number:** LLS 08-0404  
**Prime Sponsor(s):** Rep. Ferrandino  
 Sen. Bacon

**Date:** January 23, 2008  
**Bill Status:** House Judiciary  
**Fiscal Analyst:** Jessika Shipley (303-866-3528)

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

Fiscal Impact Summary	FY 2008-2009	FY 2009-2010
<b>State Revenue</b>		
General Fund	\$110,110	\$110,110
Cash Funds - Judicial Stabilization Cash Fund	\$314,600	\$314,600
<b>State Expenditures</b>		
General Fund	\$36,893	\$33,783
Cash Funds - Judicial Stabilization Cash Fund	\$445,781	\$360,785
<b>FTE Position Change</b>	7.1 FTE	7.1 FTE
<b>Effective Date:</b> July 1, 2008		
<b>Appropriation Summary for FY 2008-2009:</b> See the State Appropriations section.		
<b>Local Government Impact:</b> None.		

**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 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 or parole officer 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. 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.

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 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. 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.

Following a conviction, the court, the defendant's probation officer, or the defendant's parole officer is required to advise the defendant of his or her rights concerning the sealing of conviction records, including the procedure for doing so.

Records of convictions for the following offenses may not be sealed:

- most traffic offenses or infractions;
- sexual offenses;
- child abuse;
- identity theft;
- criminally negligent homicide;
- harassment and stalking;
- offenses relating to firearms and weapons;
- crimes involving extraordinary aggravating or sentence-enhancing circumstances; and
- domestic violence offenses.

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.

## **State Revenue**

Table 1 shows that state revenues will increase by an estimated \$424,710 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 \$184,710 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 \$110,110 in revenue to the General Fund each year.**

<b>Table 1. Estimated Revenue Under HB 08-1082</b>		
	<b>FY 2007-08</b>	<b>FY 2008-09</b>
Estimated New Filings	1,210	1,210
New Filing Fee = \$200 (Judicial Stabilization Cash Fund)	\$242,000	\$242,000
Current Filing Fee = \$91 Applied to New Petitioners (General Fund)	\$110,110	\$110,110
Current Filing Fee = \$60 Applied to New Petitioners (Judicial Stabilization Cash Fund)	\$72,600	\$72,600
<b>TOTAL</b>	<b>\$424,710</b>	<b>\$424,710</b>

**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 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 Colorado Bureau of Investigation (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 department expects the processing of requests for criminal history records and the court-ordered sealing of records to take approximately 1.5 hours per request. Given the estimate of 1,210 new petitions filed that was provided by the Judicial Branch, 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 from the General Fund.**

**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. The fiscal note indicates the following appropriations necessary under the bill:

<b>Judicial Branch</b>	<b>Amount</b>
Cash Fund - Judicial Stabilization Cash Fund	\$445,781 6.2 FTE
<b>Department of Public Safety</b>	<b>Amount</b>
General Fund	\$36,893 0.9 FTE

**Departments Contacted**

Corrections                      Judicial                      Public safety