

**STATE
FISCAL IMPACT**

Drafting Number: LLS 11-0479
Prime Sponsor(s): Rep. Ferrandino
 Sen. Nicholson

Date: February 11, 2011
Bill Status: House Judiciary
Fiscal Analyst: Alex Schatz (303-866-4375)

TITLE: CONCERNING THE PETITION PROCESS FOR THE SEALING OF CERTAIN DRUG OFFENSE RECORDS.

Fiscal Impact Summary	FY 2011-2012	FY 2012-2013
State Revenue		
State Expenditures	See State Expenditures section.	
FTE Position Change		
Effective Date: Upon signature of the Governor, or upon becoming law without his signature.		
Appropriation Summary for FY 2011-2012: None required.		
Local Government Impact: None.		

Summary of Legislation

The bill amends the process for sealing the record of a conviction under Colorado’s Uniform Controlled Substances Act, reducing a waiting period for certain classes of convictions, and authorizing the process for additional classes of convictions. With limited exceptions, the bill applies only to convictions entered on or after July 1, 2011.

Existing law requires that:

- the sentencing court or probation department advise defendants of their petition rights;
- the state court administrator post a list of all petitions for at least 30 days prior to action on the petition by the district court;
- the defendant satisfies all outstanding costs in the underlying case prior to petitioning;
- the defendant provide a list of custodians of conviction records and, if successful, pay each custodian for costs incurred to seal a record;
- a conviction record is not deemed a public conviction record and its disclosure may not be required for employment applications, rental housing applications, and other purposes, including questions by government agencies other than a criminal justice agency or the Board of Law Examiners;
- the destruction of sealed records is not authorized by virtue of the petition process; and
- conviction records will be unsealed if the defendant is later convicted of a new criminal offense or where, upon petition, the court finds the public interest outweighs the defendant’s interest in privacy.

The bill carries forward those aspects of the petition process listed above. Under the bill, the waiting period and certain procedures vary depending on the severity of the offense, as noted below in Table 1.

Type of Conviction	Waiting Period to File Petition*	Effect of District Attorney Objection	Court Procedure
Petty Offense	3 Years	Not solicited.	The court shall seal the conviction record.
Class 2 and 3 Misdemeanor	3 Years	Hearing.	If there is no DA objection, the court shall seal the record. If a hearing is held, the court may seal the record.
Class 1 Misdemeanor	5 Years	Hearing.	If there is no DA objection, the court shall seal the record. If a hearing is held, the court may seal the record.
Class 5 and 6 Felonies	7 Years	Hearing.	If there is no DA objection, the court may seal the record without hearing, or it may hold a hearing. The court may seal the record with or without a hearing.
Other Felonies and Offenses	10 Years	Dismiss petition.	A hearing is required if the petition is not dismissed. The court may seal the record after the hearing.

* *The waiting period to file a petition begins after the later of the disposition of the criminal proceeding or release from supervision.*

State Expenditures

The bill will increase costs in the Judicial Branch by extending the right to petition to seal a conviction record to additional classes of criminal convictions. New petitions to seal drug offense records will increase caseload volume in the Judicial Branch, though the overall number of such cases is presently minimal (106 cases statewide in FY 2009-10). Based on a minimum waiting period of 3 years after July 1, 2011, to file a petition under the bill, there will be no caseload effect on costs in the Judicial Branch in FY 2011-12 or FY 2012-13.

The bill will also increase costs in the Judicial Branch by requiring courts and probation offices to issue a written advisement of the right to petition to seal a conviction record. Both the trial courts and probation offices are able to produce this advisement within existing appropriations.

Departments Contacted

Judicial Public Safety Corrections Law