

**STATE and LOCAL
FISCAL IMPACT**

Drafting Number: LLS 14-1078 **Date:** April 30, 2014
Prime Sponsor(s): Sen. Ulibarri; Marble **Bill Status:** Senate Judiciary
 Rep. Singer; Melton **Fiscal Analyst:** Kerry White (303-866-3469)

SHORT TITLE: SEAL MARIJUANA CONVICTIONS LEGAL AMENDMENT 64

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016
State Revenue	<u>at least \$1,620,000</u>	<u>at least \$388,800</u>
General Fund	5,000	1,200
Cash Funds	1,615,000	387,600
State Expenditures	<u>at least \$228,412</u>	<u>at least \$33,948</u>
General Fund	205,965	29,223
Centrally Appropriated Costs**	22,447	4,725
FTE Position Change	2.0 FTE	0.4 FTE
Appropriation Required: \$205,965 - Judicial Department (FY 2014-15).		

* This summary shows changes from current law under the bill for each fiscal year.

** These costs are not included in the bill's appropriation. See the State Expenditures section for more information.

Note: While all agencies were canvassed for the fiscal note, not all agencies were able to respond with complete information. Therefore, this fiscal note should be considered preliminary. It will be revised if new information becomes available.

Summary of Legislation

This bill allows anyone who was convicted of a marijuana-related offense that would have been legal upon the adoption of Amendment 64 to petition the court to have the conviction sealed. Petitions are to be filed in the district court of the district in which the conviction record is located and only one petition may be filed during any twelve-month period.

The court is directed to seal the conviction record upon receipt of the petition and filing fee. The defendant is responsible for obtaining and paying for a verified copy of his or her criminal history. Once the records are sealed, the defendant is required to provide the Colorado Bureau of Investigation (CBI), within the Department of Public Safety, with a copy of the order and pay any costs related to sealing records within the custody of the CBI.

Under the bill, a criminal justice or law enforcement agency may use sealed records for any lawful purpose relating to the investigation or prosecution of any case. If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court is required to unseal the conviction records.

The Office of the State Court Administrator in the Judicial Department is required to post on its website a listing of all petitions to seal conviction records and a district court may not grant a petition until at least thirty days after it has been posted online.

Background

Amendment 64. Amendment 64, approved by Colorado voters in November 2012, allows persons who are age 21 and older to:

- possess, use, display, purchase, transport, and transfer - to individuals who are also 21 years of age or older - once ounce or less of marijuana; and
- possess, grow, and transport up to six marijuana plants with certain restrictions.

Prior to Amendment 64, most of these activities were limited to persons with certain medical conditions who possessed or held a medical marijuana registry card.

Sealing of records. Under current law, records of certain drug-related criminal convictions and records of arrest and criminal records other than convictions may be sealed with specific limitations.

For serious drug-related convictions entered between July 1, 2008, and July 1, 2011, a defendant is permitted to petition the court for the record to be sealed if the petition is filed at least ten years after the final disposition of all criminal proceedings and the defendant has not been charged or convicted of a criminal offense for the most recent ten-year period. Records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court for the case. The court may deny the petition under specified conditions.

For drug-related convictions entered after July 1, 2011, a defendant may petition the court for record sealing as follows:

- one year following conviction of a petty offense;
- three years following conviction of a class 2, class 3, level 2 drug, or level 3 drug misdemeanor;
- five years following conviction of a class 1 or level 1 drug misdemeanor;
- seven years following conviction of a class 5, class 6, or level 4 drug felony; and
- ten years following any other drug-related conviction under the criminal code.

In order to have the records sealed, the defendant must not have been charged or convicted of a criminal offense since the date of final disposition of all criminal proceedings or since the date of the defendant's release from supervision, whichever is later.

Workload estimates for the Judicial Department. As of this writing, the exact number of criminal convictions that would be affected by this bill is unknown. The fiscal note assumes that while many drug-related offenses may be sealed under current law, this bill will either expedite the sealing process or eliminate the possibility of a dismissal of a petition to seal records. The bill also provides for record sealing in cases that predate the relief discussed above. To provide context for the number of potential petitions, it is worth noting that, according to a 2012 report by the Marijuana Arrest Research Project, between 1986 and 2010, there were over 210,000 marijuana possession arrests in Colorado. In addition, a recent article by *The Denver Post* stated that from January 2012,

through November 2012, and excluding the City and County of Denver for which data were not available, about 4,800 people over 21 years of age were charged with petty possession of less than two ounces of marijuana. Although arrests are not the same as convictions, because most of these offenses are ticketed fines, the fiscal note assumes they are roughly equivalent.

Because it is unknown how many defendants have other criminal convictions or whether defendants will have the financial resources or incentive to petition the court, the fiscal note assumes that 5,000 requests to seal criminal conviction records will be made in FY 2014-15 and that 1,200 requests will be made per year for the next few fiscal years. If a greater number of requests are made, the fiscal note assumes the affected departments will request additional appropriations through the annual budget process.

State Revenue

This bill is anticipated to increase cash fund revenue by at least \$1,620,000 in FY 2014-15 and by at least \$388,800 in FY 2015-16.

Judicial Department. Depending on when the offense occurred, the fee to petition the court to have records sealed is either \$224 or \$424. Because it is not known when the offenses will have occurred, the fiscal note assumes that, each year, half of the petitioners will pay a fee of \$224 and that half of the petitioners will pay a fee of \$424. If the fee is \$224, it is distributed as: \$1 to the General Fund for the civil action tax; \$150 to the Judicial Stabilization Cash Fund, \$5 to the Court Security Cash Fund, and \$68 to the Justice Center Cash Fund. If the fee is \$424, it is distributed as: \$1 to the General Fund for the civil action tax; \$350 to the Judicial Stabilization Cash Fund, \$5 to the Court Security Cash Fund, and \$68 to the Justice Center Cash Fund.

Department of Public Safety. Once the records are sealed, the defendant is required to provide the CBI within the Department of Public Safety with a copy of the order and pay any costs related to sealing records within the custody of the CBI. As of this writing, the fee associated with this activity was not available.

State Expenditures

This bill will increase state expenditures by at least \$228,412 and 2.0 FTE in FY 2014-15 and by at least \$33,948 and 0.4 FTE in FY 2015-16 and future years. Table 1 and the discussion that follows describe the costs of the bill.

Cost Components	FY 2014-15	FY 2015-16
Personal Services	\$146,114	\$29,223
FTE	2.0	0.4
Operating Expenses and Capital Outlay Costs	59,851	0
Centrally Appropriated Costs*	22,447	4,725
TOTAL	\$228,412	\$33,948

* Centrally appropriated costs are not included in the bill's appropriation.

Assumptions. The costs from the bill are based on the following assumptions:

- about 5,000 defendants will file a petition in FY 2014-15 and 1,200 defendants will file a petition in FY 2015-16 and in the next few fiscal years;
- it will take 10 minutes of court time to verify the fee has been paid and issue an order to seal records;
- costs will be paid with General Fund, although Judicial Stabilization Cash Funds may be made available to the Judicial Department for its costs; and
- workload for the CBI will be similar to workload for the courts.

Judicial Department. To accomplish the increase in workload, and to unseal any records for defendants convicted of subsequent offenses, a total of 0.5 FTE magistrate is required in FY 2014-15 and 0.1 FTE for successive years beginning in FY 2015-16. Each magistrate requires 1.0 FTE each of a division clerk, law clerk, and court reporter, each prorated to 0.5 FTE for FY 2014-15 and 0.1 FTE for each successive year. Standard operating costs (\$950 per year) and one-time capital outlay costs (\$4,703) are included for the support staff. Standard operating (\$5,700) and one-time capital outlay costs (\$46,170) for magistrates are also included. Because a minimum of 0.5 FTE is required, operating costs are only included in the first year.

Department of Public Safety. Under the bill, the CBI will process requests for sealing records. As of this writing, workload and costs have not been estimated. The fiscal note assumes that the department will request appropriations through the annual budget process once it determines the impact to its workload.

Centrally appropriated costs. Pursuant to a Joint Budget Committee policy, certain costs associated with this bill are addressed through the annual budget process and centrally appropriated in the Long Bill or supplemental appropriations bills, rather than in this bill. The centrally appropriated costs subject to this policy are estimated in the fiscal note for informational purposes and summarized in Table 2.

Table 2. Centrally Appropriated Costs Under SB14-218*		
Cost Components	FY 2014-15	FY 2015-16
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$12,300	\$2,460
Supplemental Employee Retirement Payments	10,147	2,265
TOTAL	\$22,447	\$4,725

*More information is available at: <http://colorado.gov/fiscalnotes>

Local Government Impact

The bill affects local governments in two ways. First, it will increase revenue, workload, and costs for municipal courts to provide information and records in response to a defendant's request. These amounts have not been estimated. Second, the bill could reduce workload for district attorneys who, under current practice, may have objected to a petition for the sealing of conviction records for drug-related offenses covered under the bill. The fiscal note assumes any workload reduction will be minimal.

Effective Date

The bill takes effect August 6, 2014, if the General Assembly adjourns on May 7, 2014, as scheduled, and no referendum petition is filed. The bill has alternate sections for criminal record sealing, depending on whether SB14-206 becomes law. If SB14-206 takes effect, Section 2 applies. If SB14-206 does not take effect, Section 1 applies.

State Appropriations

For FY 2014-15, the Judicial Department requires an appropriation of \$205,965 General Fund and an allocation of 2.0 FTE.

State and Local Government Contacts

Counties
Judicial

District Attorneys
Municipalities

Education
Public Safety