

**FINAL  
FISCAL NOTE**

<b>Drafting Number:</b> LLS 14-1078	<b>Date:</b> July 29, 2014
<b>Prime Sponsor(s):</b> Sen. Ulibarri; Marble Rep. Singer, Melton	<b>Bill Status:</b> Postponed Indefinitely
	<b>Fiscal Analyst:</b> Kerry White (303-866-3469)

**SHORT TITLE:** SEAL MARIJUANA CONVICTIONS LEGAL AMENDMENT 64

<b>Fiscal Impact Summary*</b>	<b>FY 2014-2015</b>	<b>FY 2015-2016</b>
<b>State Revenue</b>	<b><u>at least \$1,759,900</u></b>	<b><u>at least \$422,376</u></b>
General Fund	5,000	1,200
Cash Funds	at least 1,754,900	at least 421,176
<b>State Expenditures</b>	<b><u>at least \$341,378</u></b>	<b><u>at least \$60,988</u></b>
Cash Funds	303,115	51,998
Centrally Appropriated Costs**	38,263	8,990
<b>FTE Position Change</b>	3.9 FTE	0.9 FTE
<b>Appropriation Required:</b> \$303,115 - Multiple agencies (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.

**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 defendant is also required to provide notice to the district attorney.

The court is directed to seal the conviction record upon receipt of the petition and filing fee, unless the district attorney objects to the petition. If the district attorney objects, the court is required to set the matter for hearing and make a determination as to whether to seal the records. 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 \$1,759,900 in FY 2014-15 and by at least \$422,376 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. The current fee assessed is \$27.98. Based on workload estimates, this will increase revenue by \$139,900 in FY 2014-15 and by \$33,576 in FY 2015-16. In addition, revenue could also increase if a fingerprint check is required. Each check is assessed a fee of \$6.85. As of this writing, no estimate on the number of persons that would require this check is available.

### **State Expenditures**

This bill will increase state expenditures by at least \$341,378 and 3.9 FTE in FY 2014-15 and by at least \$60,988 and 0.9 FTE in FY 2015-16 and future years.

**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; and
- workload for the CBI will be similar to workload for the courts.

**Judicial Department.** Table 1 and the discussion that follows describe the costs of the bill for the Judicial Department.

<b>Table 1. Expenditures Under SB14-218 for the Judicial Department</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
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
<b>TOTAL</b>	<b>\$228,412</b>	<b>\$33,948</b>

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

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.** Table 2 and the discussion that follows describe the costs of the bill for the Department of Public Safety.

<b>Table 2. Expenditures Under SB14-218 for the Department of Public Safety</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Personal Services	at least \$72,339	at least \$19,036
FTE	at least 1.9	at least 0.5
Operating Expenses and Capital Outlay Costs	at least 24,811	at least 3,739
Centrally Appropriated Costs*	at least 15,817	at least 4,265
<b>TOTAL</b>	<b>at least \$112,967</b>	<b>at least \$27,040</b>

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

A total of 1.9 FTE is required in FY 2014-15 and 0.5 FTE in FY 2015-16 to process requests to seal records. Standard operating costs (\$950 per year) and one-time capital outlay costs (\$4,703) are provided on a prorated basis for each fiscal year. In addition, identification operating costs of \$0.17 and IT costs of \$2.55 per request are included for 5,000 requests in FY 2014-15 and 1,200 requests in each year thereafter. It should be noted that if a person requests a fingerprint background check, costs will also increase. The \$6.85 fee noted in the State Revenue Section would offset any increase in costs associated with new fingerprint checks. This increase has not been estimated.

**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 3.

<b>Table 3. Centrally Appropriated Costs Under SB14-218*</b>		
<b>Cost Components</b>	<b>FY 2014-15</b>	<b>FY 2015-16</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$20,843	\$4,709
Supplemental Employee Retirement Payments	15,171	3,741
Indirect Cost Assessment	2,250	540
<b>TOTAL</b>	<b>\$38,264</b>	<b>\$8,990</b>

\*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 increase workload for district attorneys who object to a petition to seal records. This increase in workload has not been estimated.

### **Effective Date**

The bill was postponed indefinitely by the Senate Appropriations Committee on May 1, 2014.

### **State Appropriations**

For FY 2014-15, the Judicial Department requires an appropriation of \$205,965 from the Judicial Stabilization Cash Fund and an allocation of 2.0 FTE. The Department of Public Safety requires an appropriation of \$97,150 from the CBI Identification Unit Cash Fund and an allocation of 1.9 FTE.

### **State and Local Government Contacts**

Counties  
Judicial

District Attorneys  
Municipalities

Education  
Public Safety