

Colorado Legislative Council Staff Fiscal Note

**STATE and LOCAL  
FISCAL IMPACT**

**Drafting Number:** LLS 15-0522  
**Prime Sponsor(s):** Rep. Lebsock; Tate

**Date:** March 17, 2015  
**Bill Status:** House Local Government  
**Fiscal Analyst:** Kerry White (303-866-3469)

**BILL TOPIC:** CRIMINAL RECORD SEALING

Fiscal Impact Summary*	FY 2014-2015	FY 2015-2016	FY 2016-2017
<b>State Revenue</b>		<b>\$591,030</b>	<b>\$591,030</b>
Cash Funds	<b>Potential increase</b>	\$591,030	\$591,030
<b>State Expenditures</b>	<b>Potential increase</b>	<b>\$574,370</b>	<b>\$510,226</b>
General Fund		110,193	99,846
Cash Funds		376,689	319,807
Centrally Appropriated Costs**		87,488	90,573
<b>TABOR Set-Aside</b>	Potential increase	\$591,030	\$591,030
<b>FTE Position Change</b>		7.2 FTE	7.2 FTE
<b>Appropriation Required:</b> \$486,882 - Multiple agencies (FY 2015-16).			

\* 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 modifies and expands the right to seal certain municipal and misdemeanor offense records.

**Misdemeanor offenses.** This bill allows a person who is convicted of a misdemeanor as a first-time offender to petition the court to seal his or her criminal records. The person must wait at least five years following the completion of the sentence prior to filing a petition and establish that he or she has not been convicted of, charged with, or completed a diversion program or deferred sentence for another felony, misdemeanor, or misdemeanor traffic offense. He or she must also not be subject to a civil or criminal protection order. The district attorney may also veto a sealing request and the person is required to pay a filing fee to the court.

**Municipal offenses.** The bill prohibits sealing a second or subsequent municipal assault or battery conviction or any other municipal conviction if its underlying factual basis is domestic violence. In addition, the bill allows the district attorney to veto a sealing request for a first offense when the underlying factual basis for the conviction is related to domestic violence.

A person who successfully petitions the court for the sealing of criminal records must provide the Colorado Bureau of Investigation (CBI) and each custodian of the records with a copy of the court's order and pay the CBI the required fee.

The bill does not allow record sealing for misdemeanor traffic offenses; unlawful sexual behavior offenses; crimes against at-risk adults and juveniles; crimes of violence; offenses against public peace, order and decency; or parks and wildlife-related offenses.

## **Background**

Most misdemeanor cases for violations of state law are heard in county court, under the auspices of the state Judicial Department. The exception is that the Denver County Court is funded and administered separately. Municipal misdemeanor cases are typically processed in municipal courts, which are funded and administered by those jurisdictions. Under current law, municipal offenses are eligible for record sealing.

**Sealing criminal conviction (court) records.** Requests to seal municipal court conviction records are processed at the state level in district court. In the past three years, about 700 total requests have been made statewide. The court's database does not distinguish how many are made for municipal violations, or the further subset of municipal violations related to domestic violence. The fiscal note assumes any such requests are low in number.

**Sealing arrest and criminal records.** Once a court has sealed criminal conviction records, a person can further petition the court to seal associated arrest and criminal records held by law enforcement agencies. Under current rules, a person must petition the district court for an order to seal arrest and criminal records. Once such an order to seal records is granted, the person must take the order to the CBI to seal arrest records and to any other jurisdictions that have criminal records. The Colorado State Patrol (CSP) is involved in and maintains records for about 8,000 misdemeanor cases per year, most of which are traffic related.

## **Assumptions**

According to the Judicial Department, about 23,500 misdemeanor cases are heard in county courts each year. In FY 2013-14, there were 3,459 petitions filed to have criminal records sealed. The fiscal note assumes an additional 3,000 requests will be processed by the courts and the CBI. Under the bill, it is assumed that the CSP will be required to seal records for about 15 percent of those cases. Because the bill could apply to substantially more individuals, the fiscal note assumes that any increases in requests beyond this amount will be addressed through the annual budget process.

## **State Revenue**

**Beginning in FY 2015-16, the bill will increase cash fund revenue by \$591,030 per year.** Depending on when the bill becomes law, a small amount of revenue may also be incurred in the current FY 2014-15. This amount has not been estimated.

**Court filing fees.** A court filing fee of \$200 is required to petition the court to seal records. Assuming that about 25 percent of persons will be deemed indigent, about 2,250 persons will pay this fee each year, increasing revenue to the Judicial Stabilization Cash Fund.

**CBI filing fees.** The CBI currently charges \$27.98 to seal records and has authority to adjust its fees to cover the direct and indirect costs of the program. Assuming the 3,000 people filing to seal records under the bill pay the current fee, about \$84,000 in revenue would be generated. However, this revenue is not sufficient to cover the expenses of program with the

inclusion of the new requests under HB15-1263 and the fee will need to be increased. Because the exact amount of direct and indirect costs for the existing program was not available as of this writing, the fiscal note assumes about \$57,000 in additional revenue will be generated from all persons who request record sealing. Revenue is credited to the CBI Identification Unit Cash Fund.

**TABOR Impact**

This bill increases state revenue from fees, which will increase the amount of revenue required to be refunded under TABOR. TABOR refunds are paid from the General Fund.

**State Expenditures**

The bill will increase expenses by \$574,370 and 7.2 FTE in FY 2015-16 and by \$510,226 and 7.2 FTE in FY 2016-17. Depending on when the bill takes effect, a minimal amount of workload and costs may be incurred in the current FY 2014-15. This amount has not been estimated. Table 1 and the discussion that follows describe the costs under the bill.

<b>Table 1. Expenditures Under HB15-1263</b>		
<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
<b>JUDICIAL DEPARTMENT</b>	<b><u>\$269,469</u></b>	<b><u>\$226,314</u></b>
Personal Services	\$185,886	\$185,886
FTE	2.4	2.4
Operating Expenses and Capital Outlay Costs	49,784	5,130
Centrally Appropriated Costs*	33,799	35,298
<b>COLORADO BUREAU OF INVESTIGATION</b>	<b><u>\$169,498</u></b>	<b><u>\$158,068</u></b>
Personal Services	98,991	98,991
FTE	2.6	2.6
Operating Expenses and Capital Outlay Costs	14,698	2,470
Fingerprinting Costs	27,330	27,330
Centrally Appropriated Costs*	28,479	29,277
<b>COLORADO STATE PATROL</b>	<b><u>\$135,403</u></b>	<b><u>\$125,844</u></b>
Personal Services	97,756	97,756
FTE	2.2	2.2
Operating Expenses and Capital Outlay Costs	12,437	2,090
Centrally Appropriated Costs*	25,210	25,998
<b>TOTAL</b>	<b><u>\$574,370</u></b>	<b><u>\$510,226</u></b>
<b>General Fund</b>	<b>110,193</b>	<b>99,846</b>
<b>Cash Funds</b>	<b>376,689</b>	<b>319,807</b>
<b>Centrally Appropriated Costs</b>	<b>87,488</b>	<b>90,573</b>

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

**Judicial Department.** Costs assume 0.6 FTE magistrate and 1.8 FTE support staff are required to process the estimated additional 3,000 sealing requests per year. Standard one-time capital outlay costs and ongoing operating costs for regular staff and the magistrate are included. The costs are assumed to be paid with cash funds from the Judicial Stabilization Cash Fund.

**Department of Public Safety - CBI.** Costs assume that each 1.0 FTE data specialist can process about 1,167 requests per year, for a total increase of 2.6 FTE. Standard one-time capital outlay costs and ongoing operating costs are included. In addition, the fiscal note assumes that each request requires \$9.11 for fingerprinting related costs. These costs are assumed to be paid with cash funds from the CBI Identification Unit Fund.

**Department of Public Safety - CSP.** The CSP will have costs to seal records for cases it has investigated. Based on the assumption that about 15 percent of the 3,000 cases per year will require processing and that each case will take about 10 hours of work, a total of 2.2 FTE are required. Standard one-time capital outlay costs and ongoing operating costs are included. Because the CSP does not have authority to charge a fee for this work, its costs are assumed to be paid from the General Fund.

**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.

<b>Cost Components</b>	<b>FY 2015-16</b>	<b>FY 2016-17</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$57,830	\$57,830
Supplemental Employee Retirement Payments	29,658	32,743
<b>TOTAL</b>	<b>\$87,488</b>	<b>\$90,573</b>

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

### **Local Government Impact**

This bill will increase revenue and costs for local governments in two ways. First, it will increase workload for district attorneys to review petitions and determine whether there is an objection to the sealing request. Second, the bill increases revenue and workload for local law enforcement agencies to seal records once a petition is granted.

### **Effective Date**

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

**State Appropriations**

For FY 2015-16, the Judicial Department requires an appropriation of \$235,670 from the Judicial Stabilization Cash Fund and an allocation of 2.4 FTE. The CBI in the Department of Public Safety requires an appropriation of \$141,019 from the CBI Identification Unit Cash Fund and an allocation of 2.6 FTE. The Colorado State Patrol requires an appropriation of \$110,193 General Fund and an allocation of 2.2 FTE.

**State and Local Government Contacts**

Counties  
Municipalities

District Attorneys  
Public Safety

Judicial