

*Colorado Legislative Council Staff Fiscal Note*

**STATE and LOCAL  
REVISED FISCAL IMPACT**

(replaces fiscal note dated May 1, 2013)

**Drafting Number:** LLS 13-0297  
**Prime Sponsor(s):** Sen. Steadman  
 Rep. Levy

**Date:** May 2, 2013  
**Bill Status:** House Appropriations  
**Fiscal Analyst:** Jessika Shipley (303-866-3528)

**TITLE:** CONCERNING PROVISIONS THAT IMPROVE THE REINTEGRATION OPPORTUNITIES FOR PERSONS INVOLVED IN THE CRIMINAL JUSTICE SYSTEM, AND, IN CONNECTION THEREWITH, MAKING AN APPROPRIATION.

<b>Fiscal Impact Summary</b>	<b>FY 2013-2014</b>	<b>FY 2014-2015</b>
<b>State Revenue</b>	<b><u>\$838,682</u></b>	<b><u>\$838,682</u></b>
General Fund	84,500	84,500
Cash Funds		
CBI Identification Unit Cash Fund	617,682	617,682
Judicial Stabilization Cash Fund	100,000	100,000
Court Security Cash Fund	2,500	2,500
Justice Center Cash Fund	34,000	34,000
<b>State Expenditures</b>	<b><u>\$718,101</u></b>	<b><u>\$633,012</u></b>
General Fund	548,199	477,219
Cash Funds		
CBI Identification Unit Cash Fund	169,902	155,793
<b>FTE Position Change</b>	<b>9.9 FTE</b>	<b>9.9 FTE</b>
<b>Effective Date:</b> Upon signature of the Governor, or upon becoming law without his signature.		
<b>Appropriation Summary for FY 2013-2014:</b> See State Appropriations section.		
<b>Local Government Impact:</b> Increased costs—see Local Government Impact section		

**Summary of Legislation**

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. This reengrossed bill allows an individual to petition the court to seal conviction records pertaining to petty offenses or municipal violations, provided the petition is filed three or more years after the date of the final disposition of the case and the individual has not been charged or convicted of a criminal offense in the previous three years. Petitioners are required to pay a total filing fee of \$442. An order sealing conviction records for petty offenses or municipal violations carries the same requirements and limitations as those in current law for the sealing of criminal conviction records. A petition pertaining to sealing of criminal conviction records may be filed once every 12-month period.

The bill requires a court in a petition for sealing of arrest and criminal records other than convictions pertaining to a dismissal that is not the result of a completion of a deferred disposition or a multi-case disposition to order the record sealed if the petition is sufficient on its face.

Current law also requires probation and parole officers to provide notice to individuals on probation or parole of their rights with regard to sealing of records. The bill specifies what the notice must contain.

A defendant who enters into an agreement for an alternative sentence, such as probation or community corrections, may apply for and be granted an order of collateral relief by the court. An order of collateral relief is meant to improve the defendant's likelihood of success in the alternative sentencing program by removing barriers to employment and housing, among other things. The bill states that an order may relieve a defendant of any of the collateral consequences of a criminal conviction that the judge believes will assist the defendant in completing probation or a community corrections sentence, but it cannot apply to collateral consequences imposed by law for licensure or employment by the Departments of Corrections, Education, or Human Services, the Judicial Branch, or any law enforcement agency within the state.

Orders of collateral relief cannot be granted to defendants who have been convicted of a felony that caused a permanent disability, a crime of violence, or a sex offense. Relief granted by an order may be enlarged, limited, or circumscribed on a motion by the court, the district attorney, or the applicant. Orders may be revoked upon a motion of the district attorney, the probation officer, or the court. Copies of all orders will be sent to the Colorado Bureau of Investigation (CBI) within the Department of Public Safety, which will make a note in the Colorado Crime Information Center (CCIC) database.

The bill states that a pardon issued by the Governor waives all of the collateral consequences of a criminal conviction unless the scope of the pardon is limited with regard to collateral consequences. Notice of commutation of a sentence or a pardon must be provided by the Governor to the CBI. The CBI is then required to note in the offender's criminal record that he or she was granted a pardon or commutation of sentence.

Finally, the Department of Regulatory Agencies is required to include in any sunrise review of a profession or occupation a description of any anticipated disqualifications of an applicant for licensure, certification, relicensure, or recertification based on criminal history and how the disqualifications serve public safety or consumer protection interests.

## **State Revenue**

State revenue is expected to increase by approximately \$838,682 in FY 2013-14 and each year thereafter. Due to the high filing fee and the time and effort involved, the fiscal note assumes that only a small percentage of the total number of eligible individuals will petition to seal criminal conviction records related to petty offenses and municipal violations. No data are available about the number of annual eligible petty offense and municipal violation convictions, but 1,000 was used

as an example. Historical data shows that, on average, defendants only end up paying about half of the total filing fee due to indigency or other factors and about 90 percent of petitions result in an order to seal records.

Additionally, an expected 15,000 new applicants for orders of collateral relief will each be required to pay \$39.50 for a fingerprint-based background check from the CBI. Table 1 shows the estimated fee impact of SB 13-123.

<b>Table 1. Fee Impact of SB 13-123</b>					
<b>Type of Fee</b>	<b>Proposed Fee</b>	<b>Deposit Fund</b>	<b>Number Affected</b>	<b>Portion of Fee Paid</b>	<b>Total Fee Impact</b>
Filing fee for petition to seal criminal conviction records	\$442	General Fund - \$169 Judicial Stabilization Cash Fund - \$200 Court Security Cash Fund - \$5 Justice Center Cash Fund - \$68	1,000	50%	\$221,000
Fee to cover CBI costs to seal criminal conviction records	\$27.98	CBI Identification Unit Cash Fund	900	100%	\$25,182
Fee for fingerprint-based background checks required for applications for collateral relief	\$39.50	CBI Identification Unit Cash Fund	15,000	100%	\$592,500
<b>TOTAL</b>					<b>\$838,682</b>

**State Expenditures**

The bill will increase state expenditures as shown in Table 1 and described below.

<b>Table 2. State Expenditures Under SB 13-123</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Judicial Branch Personal Services	\$424,913	\$463,539
Judicial Branch FTE	6.9	6.9
Judicial Branch Operating Expenses	13,680	13,680
Judicial Branch Capital Outlay	94,606	0
<b>Judicial Branch Subtotal</b>	<b>\$533,199</b>	<b>\$477,219</b>
Public Safety Personal Services	152,943	152,943
Public Safety FTE	3.0	3.0
Public Safety Operating Expenses	2,850	2,850
Public Safety Capital Expenses	14,109	0
CCIC Software Vendor Expenses	15,000	0
<b>Public Safety Subtotal</b>	<b>\$184,902</b>	<b>\$155,793</b>
<b>TOTAL</b>	<b>\$718,101</b>	<b>\$633,012</b>

**Judicial Branch. General Fund expenditures in the Judicial Branch will increase by \$533,199 and 6.9 FTE in FY 2013-14 and \$477,219 and 6.9 FTE each year thereafter.** The bill is expected to increase the workload of the trial courts in two ways. First, new cases will be filed for the sealing of convictions for petty offenses and municipal ordinance violations. The fiscal note assumes that approximately 1,000 petitions will be filed each year. The increased workload will require a total of 1.3 FTE (magistrate, magistrate support staff, and judicial assistant for the Clerk of the Court's office). While these cases will be heard in district court, they are more similar to county court civil cases in terms of the time and workload they require.

The second impact to the workload of the trial courts is related to applications for orders of collateral relief. Approximately 50,000 people per year are sentenced to either probation or community corrections who would be eligible to apply for collateral relief. The fiscal note assumes 15,000 of those will petition the court. Such petitions will be considered during the sentencing phase of existing cases and are expected to add approximately 10 minutes each. This will require an additional 1.2 magistrates and 3.6 support staff. Additionally, the fiscal note assumes that 1,125 motions will be filed to modify an order (either to revoke or expand) in the future. This will require an additional 0.2 magistrates and 0.6 support staff. The total impact to the trial courts will be 6.9 FTE. The costs associated with the new staff are shown in Table 2.

**Department of Public Safety (DPS). The department will require a one-time General Fund expenditure of \$15,000 for FY 2013-14. The department requires cash fund expenditures of \$169,902 and 3.0 FTE in FY 2013-14 and \$155,793 and 3.0 FTE each year thereafter.** The

bill increases costs for the DPS in two ways. Under current law, the CBI seals criminal records involving dismissed cases and drug offenses. The CBI is able to seal an average of 2,626 records each year with 1.5 FTE. Assuming that approximately 90 percent of the 1,000 estimated new filings each year result in orders to seal, the fiscal note estimates that 900 new orders to seal records will be processed by the CBI each year. Additionally, applications for orders of collateral relief require a recent fingerprint-based records check by the CBI. Assuming 15,000 applications are filed, the additional workload would require 2.5 FTE. As a result, the impact to the CBI Identification Unit will require an additional \$169,902 and 3.0 FTE in FY 2013-14 and \$155,793 and 3.0 FTE each year thereafter, to be paid from the CBI Identification Unit Cash Fund.

The bill requires a notation to be made in a defendant's file in the CCIC. Creating a new software flag will require \$15,000 General Fund to be paid as a one-time expense to a private software vendor.

**Department of Regulatory Affairs (DORA).** DORA is required by the bill to include in any sunrise review of a profession or occupation a description of any anticipated disqualifications on an applicant for licensure, certification, relicensure, or recertification based on criminal history and how the disqualifications serve public safety or consumer protection interests. The fiscal note assumes that this is the type of information gathered during the regular sunrise review process conducted by the department and any increase in workload will be managed using existing resources.

### **Expenditures Not Included**

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 summarized in Table 3.

<b>Table 3. Expenditures Not Included Under SB 13-123*</b>		
<b>Cost Components</b>	<b>FY 2013-14</b>	<b>FY 2014-15</b>
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$59,895	\$59,895
Supplemental Employee Retirement Payments	35,469	42,811
<b>TOTAL</b>	<b>\$95,364</b>	<b>\$102,706</b>

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

### **Local Government Impact**

The bill is expected to increase workloads and costs for county sheriffs' offices, which are custodians of criminal justice records and are required to seal those records upon receipt of a court order. Costs will vary by county according to the number of orders received, but, as an example, the Boulder County Sheriff's Office estimates that it spends approximately \$95 on each record sealed.

**State Appropriations**

For FY 2013-14:

- the Judicial Branch will require a General Fund appropriation of \$533,199 and 6.9 FTE;  
and
- the Department of Public Safety requires a General Fund appropriation of \$15,000 and  
an appropriation from the CBI Identification Cash Fund of \$169,902 and 3.0 FTE.

**Departments Contacted**

Corrections  
Judicial

Counties  
Law

District Attorneys  
Public Safety

Governor  
Sheriffs