



**Colorado
Legislative
Council
Staff**

HB17-1204

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 15, 2017)

FISCAL IMPACT: State Local Statutory Public Entity Conditional No Fiscal Impact

Drafting Number: LLS 17-0520
Prime Sponsor(s): Rep. Lee

Date: April 13, 2017
Bill Status: House Appropriations
Fiscal Analyst: Kerry White (303-866-3469)

BILL TOPIC: JUVENILE DELINQUENCY RECORD EXPUNGEMENT

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue		
Cash Funds	Potential minimal increase.	
State Expenditures	<u>\$290,921</u>	<u>\$91,686</u>
General Fund	273,361	69,082
Centrally Appropriated Costs	17,560	22,604
TABOR Impact	Potential minimal increase.	
FTE Position Change	1.1 FTE	1.4 FTE
Appropriation Required: \$273,361 - Multiple agencies (FY 2017-18).		
Future Year Impacts: Ongoing potential minimal revenue and state expenditure increases.		

NOTE: This revised fiscal note is provided to reflect new information received from the Judicial Department concerning its costs.

Summary of Legislation

This bill, *as amended by the House Judiciary Committee*, makes a number of changes relating to access to juvenile delinquency records and the eligibility and process for expunging those records. Specifically, it makes juvenile delinquency records available to the juvenile and his or her attorney, and in some cases, to parents and guardians, and to other agencies that may require them for research purposes. In cases where information remains open to the public, the bill adds protections to prevent the release of certain identifying criteria, such as the juvenile's name or birth date, among others.

Direct filing arrest and criminal records. Under current law, public access to such records is permitted when a petition is filed that alleges a juvenile committed an offense that would constitute unlawful sexual behavior or a crime of violence if committed by an adult. The bill changes this provision so that public access to arrest and criminal records is available whenever a judge orders a juvenile to be charged as an adult. The bill opens certain records, with juvenile consent, to nonprofit organizations providing free legal representation or an attorney of record. A

private attorney may be charged a reasonable fee per use or a monthly fee for electronic access. It removes lower level offenses from the list of those from which prosecuting attorneys must notify and provide records to a juvenile's school principal.

Expungement of records. The bill also makes extensive changes to the juvenile delinquency record expungement process. Under current law, a person may petition for expungement of juvenile delinquency records after a waiting period of one to five years, depending on the context of the case and offense. This bill requires the court, in certain cases, to automatically order all records in a juvenile delinquency case be expunged, following a review to determine the performance of the juvenile while supervised and whether any pending cases exist, within 42 days after:

- a finding of not guilty at trial;
- dismissal of the petition in its entirety; or
- the completion of a juvenile sentence for a petty offense or a class 2 or 3 misdemeanor if that offense is not a sex offense, does not involve domestic violence, and is not a level 2 drug misdemeanor.

Records are eligible for expungement after:

- completion of a juvenile sentence when the juvenile has a class 1 misdemeanor or a misdemeanor involving domestic violence;
- the dismissal after completion of juvenile diversion, a deferred adjudication, or an informal adjustment; or
- the adjudication of a first-time felony or felony drug offense when it is not a crime of violence, offense involving unlawful sexual behavior, or a class 1 or class 2 felony.

The bill requires the court to give a written advisement of the right to, time period, and process for expungement at the time of adjudication. Depending on the juvenile's status, specific agencies are also required to provide the defendant with a written advisement on expungement. The court is required to notify the prosecuting attorney of the pending expungement after certain conditions are met and the prosecuting attorney is, in turn, required to contact the victim. If neither the victim nor the prosecuting attorney objects within 84 days of receipt of notice, the court is required to order the records expunged. If either of these parties objects, the court is required to hold a hearing at least 35 days after the date the court sends notice of the hearing. In such a hearing, the bill specifies the factors that the court is to determine in order to expunge the records. Under the bill, the ability to expunge a juvenile record may not be waived or forfeited as part of a plea bargain or disposition. On or before November 1 of each year, the court is required to review all juvenile delinquency court files from the previous two years and to enter expungement orders for all eligible cases if one was not previously made.

The bill requires municipal courts to follow similar procedures, and the period for objection and a hearing in a municipal case is also 42 days.

Access to expunged records. Expunged records remain available to any judge and the probation department for use in any future proceeding. The Colorado Bureau of Investigation may access expunged records for purposes of conducting a background check related to the purchase of a firearm. The bill allows a crime victim to petition the court and request a copy of expunged records. If the court orders the release of the records to the victim, it must also issue a protective order regarding the use of the expunged records.

Other changes to expungement of juvenile delinquency records. Other juveniles newly eligible for expungement must file a petition to request expungement after a waiting period of one to five years, depending on the circumstances of the case. After the petition is filed, the court is required to set a date for a hearing and make certain determinations in order to grant an expungement. Expungements of juvenile delinquency records, irrespective of the type of court, require no filing fee, notarization, or other formalities.

Disclosures and civil remedies. Any agency, person, company, or organization who violates these requirements is subject to civil and criminal contempt of court and may be punished by a fine. Employers, educational institutions, landlords, or government agencies, employees, and officials may not require an applicant to disclose any information contained in expunged records. An application may not be denied solely because of an applicant's refusal to disclose records or information that has been expunged.

State Revenue

To the extent that private attorneys are charged a reasonable fee for access to juvenile records in the custody of a state agency, revenue will increase. This analysis assumes that revenue increases will be credited to a cash fund within the affected agency and any increase will be minimal. Fee revenue may also increase by a minimal amount within the Judicial Department if cases are filed alleging civil or criminal contempt has occurred.

TABOR Impact

This bill increases state cash fund revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of the General Fund. Since the bill increases the TABOR refund obligation without a corresponding change in General Fund revenue, the amount of money available in the General Fund for the budget will decrease by an identical amount.

State Expenditures

This bill increases state General Fund expenditures by \$290,921 and 1.1 FTE in FY 2017-18 and \$91,686 and 1.4 FTE in FY 2018-19 and beyond. Costs are shown in Table 1 and described below.

Background and assumptions. Between January 1, 2013, and December 31, 2015, the most recent years for which data are available, there were 26,621 juvenile delinquency cases with findings entered by a court. Of these, 1,810 cases would be ineligible for expungement under this bill, leaving 24,811 or approximately 8,270 eligible cases annually. According to the Judicial Department, the court issued 2,439 expungement orders over the same period, or approximately 813 orders per year. As of this writing, the exact number of cases that become newly eligible for expungement under House Bill 17-1204 is unknown. As such, the fiscal note assumes that any of the affected departments discussed below may need to request an adjustment in appropriations through the annual budget process.

Table 1. Expenditures Under HB17-1204		
Cost Components	FY 2017-18	FY 2018-19
Judicial Department	\$164,829	\$64,249
Personal Services	39,774	48,211
FTE	0.8 FTE	1.0 FTE
Operating Expenses and Capital Outlay Costs	5,463	950
Computer Programming	107,120	0
Centrally Appropriated Costs*	12,472	15,088
Department of Human Services	\$108,710	\$0
Computer Programming	108,710	0
Department of Public Safety	\$17,382	\$27,437
Personal Services	11,764	19,285
FTE	0.3 FTE	0.4 FTE
Computer Access Charges	530	636
Centrally Appropriated Costs*	5,088	7,516
TOTAL	\$290,921	\$91,686

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

Judicial Department. Workload will increase to automatically process certain juvenile expungements, to review petitions for expungement from newly eligible persons, and to conduct the periodic review of cases. These workload impacts require a total of 1.0 FTE, prorated in the first year due to the effective date of the bill and the General Fund pay date shift. One-time capital outlay costs and ongoing annual operating costs are included. One-time IT costs of \$107,120 are required to allow non-profit organizations providing legal assistance access to the department's Government/Public Access System (PAS).

Workload will also increase for probation services to provide notifications to juveniles and to expunge records. This bill may result in guardians ad litem filing additional petitions for juvenile expungements. To the extent this occurs, costs and workload for the Office of the Child's Representative (OCR) will increase. The fiscal note assumes that no increase in appropriations is required for OCR at this time.

Department of Human Services (DHS). A total of \$108,710 is required in FY 2017-18 to program the TRAILS computer system in order to mark affected juvenile records for the Division of Youth Corrections as expunged. DHS staff will also have workload increases to advise youth under its supervision of their rights under the bill and to expunge records. The fiscal note assumes that this workload can be accomplished within existing appropriations if there are about 530 cases. To the extent that caseload exceeds this estimate, the department can request additional appropriations through the annual budget process.

Department of Public Safety. The Colorado Bureau of Investigation (CBI) within the department is estimated to require 0.4 FTE to seal records for additional juvenile expungements. First-year costs are adjusted for the effective date of the bill and pay date shift, and include computer access charges. Costs assume about 530 records will be sealed in the first year and

635 in the second year, each taking about 90 minutes to process. To the extent that the Colorado State Patrol has any juvenile delinquency records affected by the bill, workload will also increase to seal any records that are ordered expunged.

Other state agencies. Workload may increase for other agencies to expunge records related to juvenile delinquency cases.

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 HB17-1204		
Cost Components	FY 2017-18	FY 2018-19
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$9,311	\$11,861
Supplemental Employee Retirement Payments	4,618	6,048
Indirect Cost Assessments	3,631	4,695
TOTAL	\$17,560	\$22,604

Local Government Impact

This bill affects local governments in several ways.

Revenue. The bill may increase revenue for civil contempt filings, or if a local court or agency has records that a private attorney wishes to access, it may charge a reasonable fee for their use or a monthly fee for electronic access. These increases are anticipated to be minimal and to vary across jurisdictions.

Expenditures. The bill will increase local government workload and expenditures; in some jurisdictions, this impact may be significant. The bill makes certain offenses eligible for expungement that are not eligible under current law. The effect of this change is that it will increase workload for prosecuting attorneys to review additional petitions. Second, it will increase workload for municipal courts to review cases and expunge records. Finally, it increases workload for agencies that house juvenile delinquency records to ensure that these records are sealed or otherwise marked as expunged. These impacts have not been estimated due to a lack of specific information, but for illustrative purposes, the City of Aurora averages about 3,000 juvenile cases per year. It is unknown how many of the City of Aurora's cases meet the requirements of the bill and how other local jurisdictions may be affected.

Effective Date

The bill takes effect September 1, 2017.

State Appropriations

For FY 2017-18, the bill requires the following appropriations:

- \$108,710 General Fund to the Department of Human Services, of which the entire amount should be reappropriated to the Office of Information Technology;
- \$12,294 General Fund to the Department of Public Safety, Colorado Bureau of Investigations and an allocation of 0.3 FTE; and
- \$152,357 General Fund to the Judicial Department and an allocation of 0.8 FTE.

State and Local Government Contacts

Corrections
Information Technology
Public Safety

District Attorneys
Judicial
Sheriffs

Human Services
Municipalities