



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

Fiscal Note

Drafting Number:	LLS 21-0503	Date:	April 15, 2021
Prime Sponsors:	Rep. Weissman Sen. Coleman; Lee	Bill Status:	House Judiciary
		Fiscal Analyst:	Aaron Carpenter 303-866-4918 Aaron.Carpenter@state.co.us

Bill Topic: RECORD SEALING COLLATERAL CONSEQUENCES REDUCTION

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input type="checkbox"/> TABOR Refund
	<input checked="" type="checkbox"/> State Expenditure	<input checked="" type="checkbox"/> Local Government
	<input type="checkbox"/> State Transfer	<input type="checkbox"/> Statutory Public Entity

The bill makes several updates to the sealing of criminal records, creates an automatic process to seal eligible drug convictions, and retroactively allows adults and juveniles to petition for relief from collateral consequences. It will increase state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires an appropriation of \$944,657 to multiple state agencies.

Fiscal Note Status: This fiscal note reflects the introduced bill.

**Table 1
State Fiscal Impacts Under HB 21-1214**

		Budget Year FY 2021-22	Out Year FY 2022-23
Revenue	General Fund and Cash Funds	\$353,461	\$471,527
	Total Revenue	\$353,461	\$471,527
Expenditures	General Fund	\$944,657	\$1,310,254
	Centrally Appropriated	\$207,636	\$309,170
	Total Expenditures	\$1,152,293	\$1,619,424
	Total FTE	8.8 FTE	13.1 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

The bill makes several updates to the sealing of criminal records, creates an automatic process to seal eligible drug convictions, and retroactively allows adults and juveniles to petition for relief from collateral consequences. More detail can be found below.

Sealing of arrest records. The bill requires arrest records of arrests on or after January 1, 2022, to be automatically sealed if no charges have been filed within one year of arrest. The Colorado Bureau of Investigations (CBI) must seal the record within 60 days after a year has passed. If CBI receives charges after sealing, the record must immediately be unsealed.

The bill establishes the following deadlines for sealing prior arrest records with no convictions that are:

- *from 2019 to 2022:* within three years after the date of the arrest for qualifying felony offenses and within 18 months after the date of arrest for qualified misdemeanor, misdemeanor traffic, petty offense, municipal ordinance offenses;
- *from 2013 to 2018:* January 1, 2023;
- *from 2008 to 2012:* January 1, 2024;
- *from 2003 to 2007:* January 1, 2025;
- *from 1997 to 2002:* January 1, 2026; and
- *before 1997:* January 1, 2027.

An arrest record for felony offenses with greater than 3 years of limits are not eligible for sealing. CBI must allow treatment providers for sex offenders and domestic abusers access to the sealed arrest record.

Petitioning to seal criminal record. The bill allows level 1 drug felonies; class 4, 5, and 6 felonies; and unclassified felonies that are not a crime of violence and are ineligible for sealing under current law to petition to seal criminal conviction if a district attorney consents.

Sealing with multiple conviction records. The bill allows a defendant with multiple conviction records to petition to seal those records if the record or records are not eligible for sealing because of an intervening conviction. An individual must file a petition and give proper notice to the district attorney and pay a processing fee. After receiving the petition, the district attorney must determine whether to object to the petition and must advise the court of any victim objections. If the district attorney does not object and the crime is not a Victim's Rights Act crime, the court may decide on the petition without a hearing. Otherwise, the court must set the matter to hearing. To order the record sealed, a defendant must not have been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against them. Sealing cannot occur if the petitioner owes restitution, fines, court costs, late fees, or other fees, unless vacated by the court. Table 2 outlines the eligibility requirements in order to petition to seal multiple criminal records under the bill.

Table 2
Multiple Conviction Sealing

Criminal Offense	Eligibility After Sentence¹	Max. Number of Convictions²
Petty and Petty Drug Offense	2 years	5 convictions
Class 2 and 3 Misdemeanor	4 years	4 convictions
Drug Misdemeanor	4 years	4 convictions
Class 1 Misdemeanor	6 years	3 convictions
Class 4, 5, or 6 Felony	6 years	3 convictions
Level 3 or 4 Drug Felony	6 years	3 convictions
Other	10 years	2 convictions

¹ The eligibility date is the date of final disposition of all criminal proceedings or release from supervision, whichever is later. Timeline is increased by 1 year if 10 years have elapsed from the date the defendant was convicted or released for all convictions

² Indicates maximum number of convictions in separate criminal episodes.

In addition to those offenses outlined in Table 2, nonviolent level 1 drug felonies; class 4, 5, and 6 felonies; and unclassified felonies or other misdemeanor offenses that are listed as ineligible for sealing may be eligible for sealing if the district attorney consents to the sealing or the court finds clear and convincing evidence that: the petitioner's need for sealing is significant and substantial; the petitioner is no longer a threat to public safety; and public disclosure of the record is no longer necessary.

Sealing for pardoned offenses. After a person receives a full pardon, the individual may file a motion to seal their record for the offense receiving the pardon. The individual does not need to pay a processing fee but must provide the district attorney notice. The district attorney must decide whether to object to the motion and, if there is an objection, the court must set a hearing to decide if the record should be sealed.

State appointed attorney for sealing records. The bill allows the Office of the State Public Defender and the Office of the Alternative Defense Council to seek, accept, and expend gifts, grants, or donations from private or public sources to represent indigent clients in record sealing cases.

Sealing of drug convictions. The bill requires the State Court Administrator to compile a list of individuals with drug convictions who are eligible for sealing under Colorado's sealing statute if seven years have passed since the disposition of a petty offense or misdemeanor case, or ten years has passed for a felony. The administrator shall compile an initial list by February 1, 2024.

After the initial list is compiled, the State Court Administrator must forward the list to the Colorado Bureau of Investigation (CBI) within the Department of Public Safety (DPS). CBI must compare the list with a criminal history report and complete a comparison based fingerprint review. CBI must remove any convictions from the initial list in which sufficient identification validation cannot be made and if the defendant has an intervening conviction during the seven or ten year waiting period. The CBI must forward the amended list to each district attorney's office.

When the amended list is received, district attorneys must remove convictions where a condition of plea was not to seal a defendant's conviction record and convictions in which the defendant has a pending charge. District attorneys must then forward the list to the State Court Administrator who must compile each district attorney's list into one final list sorted by judicial district.

Upon completion of the final list, each chief judge of a judicial district may authorize the state court administrator to issue sealing orders to the CBI, local law enforcement, district attorneys, and the defendant if contact information is available. If a chief judge does not give authorization, the district attorney must send the final list to the chief judge and their courts who must enter the sealing orders. The district court must send a copy of the sealing order to the CBI, local law enforcement, the district attorney's office, and the defendant if the contact information is necessary. Records must be sealed by July 1, 2024. After July 1, 2024, the state court administrator must compile a new list every 35 days with the CBI and district attorneys completing their review within 35 days of receiving a list, and sealing occurring within 14 days of receiving the amended list.

Finally, the State Court Administrator must develop a website that allows defendants to confidentially determine whether their conviction has been sealed, and information on how to receive a copy of the sealing order.

Collateral relief. Finally, the bill allows adults and juveniles to retroactively file motions for relief from collateral consequences. In addition, the bill allows the General Assembly to appropriate funds from the Marijuana Tax Cash Fund to be used for expenses related to the reduction of collateral consequences experienced by people previously sentenced for drug offenses.

Assumptions

Petitions to seal criminal record. Between January 1, 2010, and December 31, 2019, there were an average of 20,956 level 1 drug, class 4, 5, 6, or unclassified felony cases per year where a sentence was imposed, excluding crimes of violence. The fiscal note assumes that 20 percent of these cases or 4,191 cases will petition to seal their records per year and that each petition will average 15 minutes of work for the court and a district attorney to review.

Petitions to seal multiple convictions. Between January 1, 2010, and December 31, 2019, there were an average of 15,897 individuals per year with more than one criminal conviction that may be eligible for sealing under the bill. The fiscal note assumes that 10 percent of these individuals or 1,590 individuals will petition to seal their record per year and that a Judicial Officer can manage 1,098 civil cases per year.

State Revenue

The bill will increase state General Fund and cash fund revenue to the Judicial Department by \$353,461 in FY 2021-22 and \$471,527 in FY 2022-23 from an increase in record sealing fees.

Record sealing fees. Table 3 outlines the total court fees to seal criminal records, assuming a 25 percent indigence rate. FY 2021-22 revenue assumes and October 1, 2021, start date. Court fees are subject to the state's TABOR limit.

Table 3
Revenue Under HB 21-1214

Fiscal Year	Type of Fee	Fee	Number¹	Total
FY 2021-22	Single Record Sealing	\$65	2,357	\$153,205
	Multiple Record Sealing	\$224	894	\$200,256
	FY 2021-22 Total			\$353,461
FY 2022-23	Single Record Sealing	\$65	3,143	\$204,295
	Multiple Record Sealing	\$224	1,193	\$267,232
	FY 2022-23 Total			\$471,527

¹ Fee numbers assume a 25 percent indigence rate.

Gifts, grants, and donations. In addition to court revenue, the bill may also increase revenue to the Office of the State Public Defender and the Office of the Alternative Defense Counsel from gifts, grants, and donations. No source of gifts, grants, and donations have been identified at this time. Gifts, grants, and donations are not subject to the state's TABOR limit.

State Expenditures

This bill will increase state expenditures by \$1.2 million and 8.8 FTE in FY 2021-22 and by \$1.6 million and 13.1 FTE in FY 2022-23 in the Judicial Department and the DPS. In addition, starting in FY 2023-24, the bill will increase expenditures in the Judicial Department and DPS to compile and review a list of drug convictions eligible for sealing. Finally, workload may increase for the independent judicial agencies that represent indigent persons. Expenditures for FY 2021-22 and FY 2022-23 are outlined in Table 4 and additional details can be found below.

Table 4
Expenditures Under HB 21-1214

Cost Components	FY 2021-22	FY 2022-23
Judicial Department		
Personal Services	\$495,242	\$759,318
Operating Expenses	\$12,885	\$14,910
Capital Outlay Costs	\$220,438	\$4,800
Computer Programming	-	\$274,387
Centrally Appropriated Costs ¹	\$133,033	\$195,606
FTE – Personal Services	5.2 FTE	7.6 FTE
Judicial Subtotal	\$861,598	\$1,249,021
Department of Public Safety		
Personal Services	\$164,042	\$246,061
Operating Expenses	\$5,535	\$7,425
Capital Outlay Costs	\$31,000	-
Mailings	\$2,515	\$3,353
Computer Programming	\$13,000	-
Centrally Appropriated Costs ¹	\$74,603	\$113,564
FTE – Personal Services	3.6 FTE	5.5 FTE
DPS Subtotal	\$290,695	\$370,403
Total	\$1,152,293	\$1,619,424
Total FTE	8.8 FTE	13.1 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. The bill increases state expenditures in the Judicial Department in two main areas, trial courts and information technology for the Office of the State Court Administrator. Costs are described in more detail below.

- *Trial courts.* Based on amount of additional hearing time outlined in the Assumptions section, this bill increases Judicial Department staffing by a total of 7.6 FTE. The Judicial Department will require an additional 1.9 FTE Judicial Officer, and 5.7 FTE of support staff, including a court clerk, law clerk, and court reporter. Costs in FY 2021-22 are prorated for the General Fund pay date shift and for an October 1, 2021, start date. Based on Judicial Department common policies, standard operating and capital outlay costs are included for judges and support staff. Judges costs consist of funding for law library materials, travel expenses, judge robe expenditures, and computer hardware and software, as well as furnishings for the judge chambers, law library, jury room, and conference room.

- *Computer programming.* To compile a list of eligible drug offenses for sealing, the Judicial Department requires updates to IT systems to compile a list of eligible offenses to send the list to required parties, to issue orders to seal cases for courts that opt into allowing the State Court Administrator to issue the orders, and to enter sealing codes automatically. The department must also create a website to allow a defendant to verify that their record was sealed and how to receive a copy. The above work is estimated to take 2,531 hours at an average cost of about \$108 an hour in FY 2022-23, and 3,037 hours in FY 2023-24 at a cost of \$114 per hour.
- *Sealing of drug records.* Assuming a majority of courts opt-in to allowing the State Court Administrator to issue sealing orders, workload to the Office of the State Court Administrator will increase to process the list of court records and to send an order to seal to relevant agencies. Because the fiscal note assumes this will be an automated process, as described above, the increase in workload is expected to be minimal.

Department of Public Safety. The bill will increase expenditures in the Colorado Bureau of Investigation in DPS by \$244,433 in FY 2021-22 and by \$256,839 in FY 2023-24. Expenditures will also increase in future years, as described below.

- *Sealing of criminal offenses through court petitions.* Based on the number of record sealing petitions outlined in the Assumptions section, the DPS will require 5.5 FTE to seal criminal records related to the expanded number of eligible offenses that may petition and to multiple convictions. This assumes that 1 FTE can process 1,167 sealing requests a year and that a supervisor is required for every 10 records staff. FTE costs include personal services, operating, and capital outlay costs. Costs in FY 2021-22 are prorated for an October 1, 2021, and the General Fund pay date shift. Finally, the fiscal note assumes that individuals with a court order for record sealing will not have to pay a fee to DPS; therefore, costs will be covered by the General Fund.
- *Mailings.* Starting in FY 2021-22, expenditures in the DPS will increase for printing and postage to notify individuals that their records have been sealed. Costs assume that each notification costs \$0.58.
- *Computer programming to seal arrest records.* In FY 2021-22 only, expenditures in the DPS will increase to make modifications to the Colorado Crime Information Center System to automatically seal arrest records when no charges are brought. The modifications are estimated to cost \$13,000.
- *Unsealing records.* Workload to the DPS will increase to unseal records if charges are brought after records are sealed. The fiscal note assumes that these instances will be minimal and that this work can be accomplished within existing appropriations.
- *Sealing drug records.* Starting in FY 2023-24, expenditures in the DPS will increase to review a list prepared by the State Court Administrator, to conduct a fingerprint review, and to revise the list as necessary. The exact increase of expenditures will depend on the number of cases identified by the State Court Administrator. For informational purposes, assuming each entry will take 20 minutes on average to review, the DPS will require 1.0 FTE per about 6,000 cases. These costs will be addressed through the annual budget process.

Offices representing indigent offenders. To the extent the Office of the State Public Defender and the Office of the Alternative Defense Council receive gifts, grants, and donations to assist indigent offenders in sealing their record, expenditures will increase. Because the bill does not change the duties of either office in representing indigent offenders in record sealing proceedings, the fiscal note assumes that the offices will assist in the sealing of records only if funds are available.

Marijuana Tax Cash Fund. To the extent the General Assembly chooses to use Marijuana Tax Cash Fund money to fund programs that reduce collateral consequences, such as access to employment, housing, and other services, expenditures to those programs will increase.

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. These costs, which include employee insurance and supplemental employee retirement payments, as well as leased space for DPS employees and are estimated to be \$207,636 in FY 2021-22 and \$309,170 in FY 2022-23.

TABOR refunds. The bill increases state revenue subject to TABOR. For FY 2022-23, the March 2021 LCS forecast projects revenue to fall short of the TABOR limit by \$28.6 million, or 0.2 percent of the limit. If actual revenue exceeds the limit, the bill will increase the amount required to be refunded to taxpayers from the General Fund in FY 2023-24.

Local Government

The bill will increase expenditures to local government agencies including district attorney offices and the Denver County Court, as described below.

District attorneys. Expenditures in district attorney's offices will increase to review and respond to petitions; contact victims, as necessary; and attend hearings.

Starting in FY 2023-24, expenditures will increase for each office to review lists of potential drug records to be sealed. For informational purposes, each drug record identified will cost district attorney's offices about \$15 per record for a support staff to review. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Denver County Court. Similar to the Judicial Department, revenue and expenditures in the Denver County Court will increase to hear additional petitions and receive processing fees. The Denver County Court will update its information technology system at a cost of up to \$150,000 to interface with the Judicial Department's system for collaborative development of a list of eligible drug records and to develop a website for offenders to access information about sealed records. The Denver County Court is administered and funded by the City and County of Denver.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2021-22, the bill requires the following General Fund appropriations:

- \$728,565 and 5.2 FTE to the Judicial Department; and
- \$216,092 and 3.6 FTE to the Department of Public Safety.

State and Local Government Contacts

Corrections
Human Services
Municipalities

Denver County Court
Information Technology
Public Safety

District Attorneys
Judicial
Revenue