



Legislative Council Staff

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Final Fiscal Note

Drafting Number:	LLS 22-0502	Date:	July 11, 2022
Prime Sponsors:	Sen. Hisey; Rodriguez Rep. Tipper; Larson	Bill Status:	Signed into Law
		Fiscal Analyst:	Aaron Carpenter 303-866-4918 Aaron.Carpenter@state.co.us

Bill Topic: **SEALING CRIMINAL RECORDS**

Summary of Fiscal Impact:	<input checked="" type="checkbox"/> State Revenue	<input checked="" 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 requires all records that are eligible to be sealed under current law to be automatically sealed by July 1, 2024. The bill excludes the use of sealed records in consumer reports. The bill increases state and local expenditures and decreases state revenue on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires and includes an appropriation of \$725,145 to the Judicial Department.

Fiscal Note Status: The fiscal note reflects the enacted bill.

**Table 1
State Fiscal Impacts Under SB 22-099**

		Budget Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
Revenue	Cash Funds	-	(\$227,290)	(\$227,290)
	Total Revenue	-	(\$227,290)	(\$227,290)
Expenditures	General Fund	\$725,145	\$1,283,969	\$351,100
	Centrally Appropriated	\$48,956	\$131,121	\$45,445
	Total Expenditures	\$774,101	\$1,415,090	\$396,545
	Total FTE	0.8 FTE	4.2 FTE	1.7 FTE
Transfers		-	-	-
Other Budget Impacts	TABOR Refund	-	(\$227,290)	(\$227,290)
	General Fund Reserve	\$108,772	\$192,595	\$52,665

Summary of Legislation

The bill automatically seals records that are eligible to be sealed under current law, and excludes the use of sealed records in consumer reports.

Automatic sealing of criminal records. House Bill 21-1214 established a process to automatically seal certain criminal records related to drug offenses. The bill expands the eligible offenses for automatic record sealing to certain offenses that have no intervening conviction and are currently eligible for sealing by petition, including:

- civil infractions with four years since the final disposition;
- petty offenses or misdemeanors with seven years since the final disposition; and
- felonies with ten years since the final disposition.

If the defendant's records are not automatically sealed, the defendant may still make a motion to seal at no charge.

The bill requires the State Court Administrator to compile an initial list of eligible cases by February 1, 2024, and to send the list to district attorneys. District attorneys have 45 days to remove convictions from the list where the condition of a plea was that the defendant agreed not to have their conviction record sealed and where the defendant has a pending criminal charge, an intervening conviction, or convictions that are ineligible for sealing. For non-drug felony convictions, district attorneys may object when the district attorney has a reasonable belief that the public interest and public safety in retaining public access to the record outweighs the privacy interest of or adverse consequence to the defendant. A defendant may request a court hearing for any objection relating to a felony offense. The district attorney must send the final list back to the State Court Administrator who then will remove the convictions objected to by the district attorneys and send the list to each chief judge of each judicial district to enter sealing orders. The records on the initial list must be sealed by July 1, 2024, and a new list must be updated quarterly. All sealing orders must be sent electronically to the Colorado Bureau of Investigation (CBI) and the defendant may obtain a copy of sealing order and serve it to any record custodian.

Diversion sealing. The bill requires district attorneys to seal their records and to notify the CBI and other law enforcement entities to seal their records once an offender's diversion is complete.

Other process updates. The bill makes several updates to the current non-automatic process for sealing records. First, the bill requires the court, instead of the defendant, to provide custodians of the criminal record with a copy of a sealing order. Second, the bill allows defendants to seal their record even if they have unpaid fines, court costs, late fees or other fees ordered by the court.

Sealing municipal violations. The bill allows a defendant to file a motion three years after the final disposition of all criminal proceedings or the date of release from supervision, whichever is later, in which any conviction records for a municipal violation are located if:

- the defendant has not been charged with or convicted of a felony, misdemeanor, or misdemeanor traffic offense since the date of the final disposition of all criminal proceedings against the defendant or the date of the defendant's release from supervision, whichever is later; and
- the conviction records are not for a misdemeanor traffic offense committed by a commercial learner's permit or license holder, or by a commercial motor vehicle operator.

Defendants with a single subsequent offense may file a motion to seal records 10 years after the date of the final disposition of all criminal proceedings or the date of release from supervision, whichever is later, if:

- the defendant was convicted of a single offense that was not a felony and did not involve domestic violence, unlawful sexual behavior, or child abuse;
- the defendant was convicted a single offense that was not a felony, misdemeanor, or misdemeanor traffic offense since the date of the final disposition of all criminal proceedings against the defendant or the date of the defendant's release from supervision, whichever is later; and
- the conviction is not a municipal assault or battery offense in which the underlying factual basis involves domestic violence.

The defendant must pay a filing fee, and the court must review the motion to determine if the motion requires a hearing. If the court determines that the petition is sufficient, the court must grant the motion unless the prosecution files an objection. If the prosecution does object, the court must set a hearing within 42 days of the filing.

Reports. The bill requires two reports related to automatic sealing. First, the bill requires the Judicial Department to report on the number of conviction records received and were considered for automatic sealing by February 1, 2024. In addition, the bill requires the Colorado Bureau of Investigation (CBI) to report on the number of arrest records that were sealed.

Sealed criminal record information in reports. The bill requires consumer reporting agencies to exclude sealed and expunged records from a consumer report unless the user of the report demonstrates that the user is required to consider the information according to law. Finally, the bill removes the exception of including prohibited information in consumer reports for employment of an individual who is expected to make at least \$75,000.

Background

Under current law there are three main processes to have one's criminal record sealed: a simplified process, a petition process, and an automatic process.

Simplified process. Under current law, the court must order a defendant's criminal justice records sealed when a case is dismissed; the defendant is acquitted of all counts; the defendant completes a diversion agreement; or the defendant completes a deferred judgement and sentence and all counts are dismissed. Defendants who have their records sealed must pay a \$65 processing fee.

Petition process. Under current law, a defendant may file a motion to seal their record if:

- it has been one year since the final disposition of an eligible petty or drug petty offense;
- it has been two years since the final disposition of an eligible class 2, 3, or drug misdemeanor;
- it has been three years since the final disposition of an eligible class 4, 5, or 6 felony, level 3 or level 4 drug felony, or a class 1 misdemeanor; or
- it has been five years since the final disposition for any other offense that is eligible for sealing.

After receiving the motion, the court must review the motion and determine if there are grounds to proceed to a hearing. If the motion is sufficient, the court proceeds to a hearing if the motion is sealing a class 3 misdemeanor or higher. If the motion is for a petty offense or petty drug offense, the court must order the record sealed. Conviction records cannot be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees unless the court vacates the order. Finally, defendants must pay a \$65 processing fee.

Automatic process. House Bill 21-1214 established a process to automatically seal certain drug convictions if seven years have passed since the disposition of a petty offense or misdemeanor, or ten years have passed since the disposition of a felony. The process for automatic sealing mirrors the process outlined in the bill.

Other processes. There are other processes for sealing certain records under current law. This includes expungement of arrest records of mistaken identity, of arrest records when no charges are filed, of conviction information for offenses committed by victims of human trafficking, of conviction records for municipal offenses, of criminal conviction records for multiple convictions, and of criminal conviction records for offenses that receive a full and unconditional pardon.

Data and Assumptions

Historical cases eligible for sealing. According to the Judicial Department's case management system, there are about 1.5 million cases since 2000 that could be subject to automatic sealing under the bill. The fiscal note assumes that of these cases, 25 percent of them have sealed their records under current sealing statutes. Of the remaining 1.12 million, it is assumed that 50 percent of cases, 562,500 cases, will be immediately eligible for automatic sealing on the initial list required by the bill.

Yearly cases eligible for sealing. According to the Judicial Department's case management system, from 2017 to 2021, there were 273,958 unique cases flagged as being eligible for sealing, or 54,792 annually. The fiscal note therefore assumes that 54,792 cases annually will be sealed starting in FY 2024-25.

State Revenue

The bill will decrease state cash fund revenue to the Judicial Stabilization Cash Fund in the Judicial Department and the CBI Identification Unit Cash Fund in the Department of Public Safety (DPS) by an estimated \$227,290 per year starting in FY 2023-24. Estimated revenue decreases are shown in Table 2 and described below. Revenue collected from the sealing of records is subject to the state's TABOR limit.

Table 2
Annual Revenue Impact Under SB 22-099

Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
Civil Filing Fee	\$65	(2,674)	(\$173,810)
CBI Sealing Fee	\$20	(2,674)	(\$53,480)
		Annual Total	(\$227,290)

Civil filing fee. The fiscal note assumes that under the bill, there will be 3,415 fewer cases that file with the court to have records sealed than under current law. Those with single subsequent offenses will continue to pay civil filing fees. Assuming a 25 percent indigence rate, the fiscal note assumes the Judicial Department will receive 2,674 fewer petitions that pay the \$65 processing fee.

CBI sealing fee. The CBI currently charges a \$20 fee to seal cases. Because the bill will automatically seal the cases without a fee, fee revenue to CBI will decrease. Assuming 2,674 individuals pay the fee, revenue will decrease by \$53,480.

Other court fines and fees. The bill removes the requirement that the defendant repay any fees or fines issued by the court before having their record sealed, which will decrease revenue from those fees and fines. This revenue impact has not been estimated.

State Expenditures

The bill increases state expenditures in the Judicial Department by \$774,101 in FY 2022-23, \$1.4 million in FY 2023-24, and \$396,545 in FY 2024-25, paid from the General Fund. Expenditures are shown in Table 2 and detailed below. Any staffing costs identified below include costs for personal services, operating expenses, and capital outlay as shown in Table 3, with first year costs prorated for the General Fund pay date shift.

**Table 3
Expenditures Under SB 22-099**

Cost Components	FY 2022-23	FY 2023-24	FY 2024-25
Judicial Department			
Personal Services	\$57,872	\$287,052	\$123,805
Operating Expenses	\$760	\$3,990	\$1,615
Capital Outlay Costs	\$6,520	\$39,600	\$680
Probation Contract Staff	-	\$90,000	-
IT Modifications	\$659,993	\$863,327	\$225,000
Centrally Appropriated Costs ¹	\$48,956	\$131,121	\$45,445
Total	\$774,101	\$1,415,090	\$396,545
Total FTE	0.8 FTE	4.2 FTE	1.7 FTE

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

Judicial Department. The bill increases expenditures in the Judicial Department to automatically seal eligible records, including both the one-time sealing of historical records and annual sealing of newly eligible records. The bill impacts a variety of divisions within the department, as described below.

- **State Court Administrator's Office.** Starting in FY 2022-23, the State Court Administrator's Office will require 1.0 FTE to assist in the development of required IT modifications, provide and receive quarterly lists through the automatic sealing process, to amend lists as necessary, to provide amended and annotated lists to the chief judges, to research specific cases as needed, provide technical assistance to both internal and external stakeholders, and to prepare an annual report.
- **Trial courts.** The trial courts require 4.2 FTE in FY 2023-24 and 0.7 FTE in FY 2024-25 court staff to process and send sealing orders. In FY 2024-25, it is assumed that seventy percent of the assumed 562,500 cases immediately eligible for sealing will require court staff work to process returned mail and update contact information for defendants, taking 2 minutes per case. Starting in FY 2023-24, the staff is required to process return mail for defendants, to send sealing orders that are requested through the non-automatic sealing process to CBI and custodians, and to notify defendants that a district attorney has objected to including them on the automatic sealing list.

In addition, the bill will impact judge workload in two ways. First, to the extent district attorneys object to including a defendant on the sealing list, and the defendant requests a hearing workload will increase to conduct the hearing. The fiscal note assumes that 1 percent of cases will go to a hearing. Second, to the extent that defendants file a motion in municipal court instead of civil district court to have their municipal records sealed, workload will decrease. The fiscal note assumes that district courts will see a decrease of 138 cases filed annually. Overall, based on these assumptions, the fiscal note assumes that judge workload will be minimally impacted. If workload is more or less than expected, changes to appropriations will be requested through the annual budget process.

- **Probation.** In FY 2023-24 only, the Probation Division will require temporary contract staff to seal historical records that are stored digitally. The fiscal note assumes that out of the assumed historical cases identified, 225,000 will have records with the Probation Division. Assuming that it takes 1 minute per case to mark any digital records sealed, the division will require 3,750 hours of contract work at an estimated rate of \$24 per hour. This amount assumes the division will have two months to seal records by July 1, 2024.
- **Information technology.** Starting in FY 2022-23 the Judicial Department will modify its IT systems to allow for the department to send out an expanded list of eligible cases for sealing, to develop various data transfers between different databases and parties, to process and send sealing orders to parties that opt into the system, and to enter proper sealing codes automatically. These modifications are estimated at a cost of \$659,993 in FY 2022-23, \$863,327 in FY 2023-24, and \$225,000 in FY 2024-25.

Department of Public Safety. Starting in FY 2023-24, workload to the CBI will increase to seal records received from the list. The fiscal note assumes that the list will be sent to CBI electronically. However, if the list is sent via mail and the CBI is required to seal records manually, staff will be required.

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, are shown in Table 2.

Other Budget Impacts

TABOR refunds. The bill is expected to decrease the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section. This estimate assumes the March 2022 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. Because TABOR refunds are paid from the General Fund, decreased cash fund revenue will increase the amount of General Fund available to spend or save.

General Fund reserve. Under current law, an amount equal to 15 percent of General Fund appropriations must be set aside in the General Fund statutory reserve beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve as shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

District attorneys. Starting in FY 2023-24, expenditures and workload within local district attorney offices will increase to review the initial list eligible records, to object to any record, to attend any hearings due to the objection, and to seal any records identified in the list. The exact increase will depend on district attorney office and the amount of records they must review. For informational purposes, it is estimated that it would cost about \$24 per case to review the list, conduct any research, and to track any objection. Based on a breakdown of eligible cases by judicial district, costs may range from \$95,000 to \$2.1 million per district in FY 2023-24 only. Using a similar portion of cases in the out years, costs are estimated to increase by \$13,000 to \$200,000 per year depending on the office. Some cases may cost less if there is no objection or if less research is necessary.

In addition, costs to district attorneys will also increase to seal diversion files. The fiscal note assumes it will cost \$7.50 per case to seal diversion files and that there will be 23,700 cases statewide that require sealing at an overall statewide cost of about \$178,000. Costs to individual offices will vary based on diversion caseload. Local district attorney offices are funded by the counties located within each judicial district.

Municipal courts. Expenditures and workload will increase for municipal courts to the extent municipal courts receive more petitions to seal records. Costs will vary based on jurisdiction and an exact increase in cost cannot be estimated at this time.

Effective Date

The bill was signed into law by the Governor on May 31, 2022, and takes effect on August 9, 2022, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires and includes an appropriation of \$725,145 from the General Fund to the Judicial Department and 0.8 FTE.

State and Local Government Contacts

District Attorneys
Law

Information Technology
Public Safety

Judicial
Regulatory Agencies