



**Colorado
Legislative
Council
Staff**

HB16-1395

**FINAL
FISCAL NOTE**

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

Drafting Number: LLS 16-0650

Date: May 31, 2016

Prime Sponsor(s): Rep. Lee

Bill Status: Postponed Indefinitely

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BILL TOPIC: JUVENILE DELINQUENCY RECORD EXPUNGEMENT

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue		
State Expenditures	<u>\$120,210</u>	<u>\$78,411</u>
General Fund	110,143	65,026
Centrally Appropriated Costs	10,067	13,385
FTE Position Change	1.1 FTE	1.4 FTE
Appropriation Required: \$110,143 - Multiple agencies (FY 2016-17).		
Future Year Impacts: Ongoing increase in state expenditures.		

NOTE: This bill was not enacted; therefore, the impacts identified in this analysis do not take effect.

Summary of Legislation

This bill 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 is only granted if a judge orders a juvenile to be charged as an adult after holding a hearing. The bill also allows these records to be made available to a nonprofit organization providing free legal assistance or for purposes of determining eligibility for such services, and to an attorney that has entered an appearance on behalf of the juvenile. The bill allows for a per use fee or a monthly fee for electronic access to be charged to a private attorney.

Automatic expungement of juvenile delinquency records. 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 repeals the current process and requires the court to automatically order all records in a juvenile delinquency case be expunged immediately upon:

- a finding of not guilty at trial;
- dismissal of the petition in its entirety;
- dismissal after completion of a juvenile diversion, deferred adjudication, or informal adjustment; or
- the completion of a juvenile sentence for a class 2 or class 3 misdemeanor offense that is not a sex offense and does not involve domestic violence.

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. On or before November 1 of each year, the court is required to review all juvenile delinquency court files during the previous two years and to enter an expungement order for all juveniles eligible for expungement if an order wasn't previously made.

Records are eligible for expungement upon completion of a juvenile sentence for a class 1 misdemeanor; a misdemeanor sex offense; a misdemeanor involving domestic violence; or a first time felony adjudication if that felony is not a crime of violence, class 1 or class 2 felony, or an offense involving unlawful sexual behavior. The court is required to notify the district attorney of the pending expungement after certain conditions are met and the district attorney is, in turn, required to contact the victim. If neither the victim nor the district attorney objects within 56 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.

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.

Municipal court records. Municipal courts are required to follow similar procedures to the state concerning expungement of cases of juvenile municipal code or ordinance violations.

Disclosures and civil remedies. Any person who violates these requirements is subject to contempt of court. A person has a right of action against any other person who violates the confidentiality provisions of these records and, in the case of a public employee, is cause for dismissal. Punitive damages in the amount of up to \$1,000 may be sought in addition to any actual damages. The prevailing party is entitled to costs and reasonable attorney fees. 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 Expenditures

This bill increases state General Fund expenditures by \$120,210 and 1.1 FTE in FY 2016-17 and by \$78,411 and 1.4 FTE in FY 2017-18. Costs are shown in Table 1 and described below.

Table 1. Expenditures Under HB16-1395		
Cost Components	FY 2016-17	FY 2017-18
Judicial Department	<u>\$47,374</u>	<u>\$57,984</u>
Personal Services	36,159	48,211
FTE	0.8 FTE	1.0 FTE
Operating Expenses and Capital Outlay Costs	4,522	950
Centrally Appropriated Costs*	6,693	8,823
Department of Human Services	<u>\$57,510</u>	<u>\$0</u>
Computer Programming	57,510	0
Department of Public Safety	<u>\$15,326</u>	<u>\$20,427</u>
Personal Services	11,422	15,229
FTE	0.3 FTE	0.4 FTE
Computer Access Charges	530	636
Centrally Appropriated Costs*	3,374	4,562
TOTAL	<u>\$120,210</u>	<u>\$78,411</u>

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

Background and assumptions. Between January 1, 2012, and December 31, 2014, there were 27,648 juvenile delinquency cases with findings entered by a court. Of these cases, 1,897 would be ineligible for expungement under this bill, resulting in 25,751 or 8,584 cases annually. According to the Judicial Department, the court issued 2,710 expungement orders over the same period, or approximately 723 cases per year. As of this writing, the exact number of cases that become newly eligible for expungement under House Bill 16-1395 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.

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.

Department of Human Services. A total of \$57,510 is required in FY 2016-17 to program the TRAILS computer system in order to mark affected juvenile records for the Division of Youth Corrections as expunged.

Department of Public Safety. The Colorado Bureau of Investigation 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. To the extent that the Colorado State Patrol has any juvenile delinquency records, workload will also increase to seal any records that are ordered expunged. This analysis assumes that if additional appropriations are required for the Colorado State Patrol, they can be requested through the annual budget process.

Other agencies. 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 will increase. The fiscal note assumes that no increase in appropriations is required at this time.

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 HB16-1395		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$5,996	\$7,700
Supplemental Employee Retirement Payments	4,071	5,685
TOTAL	\$10,067	\$13,385

Local Government Impact

This bill affects local governments in several ways. First, it 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 district attorneys to review additional petitions. Second, it may increase workload for municipal courts to 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.

Effective Date

The bill was postponed indefinitely by the House Judiciary Committee on May 5, 2015.

State Appropriations

For FY 2016-17, the bill requires the following appropriations:

- \$57,510 General Fund to the Department of Human Services, of which the entire amount should be reappropriated to the Office of Information Technology;
- \$11,952 General Fund to the Department of Public Safety, Colorado Bureau of Investigations and an allocation of 0.3 FTE; and
- \$40,681 General Fund to the Judicial Department and an allocation of 0.8 FTE.

State and Local Government Contacts

District Attorneys
Information Technology

Education
Judicial

Human Services
Public Safety