



**Colorado
Legislative
Council
Staff**

SB16-116

**REVISED
FISCAL NOTE**

(replaces fiscal note dated February 15, 2016)

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

Drafting Number: LLS 16-0961

Date: March 31, 2016

Prime Sponsor(s): Sen. Johnston
Rep. Lee; Lebsock

Bill Status: House Judiciary

Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: PRIVATE COMPANY ACCURATE CRIMINAL HISTORY DATA

Fiscal Impact Summary	FY 2016-2017	FY 2017-2018
State Revenue	<u>\$354,408</u>	<u>\$402,648</u>
Cash Funds	354,408	402,648
State Expenditures	<u>\$219,653</u>	<u>\$246,911</u>
Cash Funds	178,173	197,595
Centrally Appropriated Costs	41,480	49,316
TABOR Impact	\$354,408	\$402,648
FTE Position Change	3.5 FTE	4.0 FTE
Appropriation Required: \$178,173 - Judicial Department (FY 2016-17).		
Future Year Impacts: Ongoing state revenue and expenditure increases.		

Summary of Legislation

The *reengrossed* bill provides a simplified process for sealing criminal justice records. Whenever a defendant appears in court and has charges against him or her dismissed or not filed, or whenever a defendant is acquitted, the court must give an eligible defendant the option to immediately seal criminal justice records. The motion may be informal, and the written advisement provided to the defendant must contain a check box where the defendant can indicate if he or she is moving to have his or her records sealed. If the defendant opts to seal his or her records using this process, the court must promptly process the defendant's request. If the defendant opts to seal his or her records using other provisions of law, the court must refer the defendant to support services to assist him or her.

The Supreme Court may set and collect fees to cover the direct and indirect costs for the sealing of criminal justice records through this simplified process.

Background

Under current law, whenever a defendant appears before the court and has charges dismissed or not filed, or whenever a defendant is acquitted, the court must provide him or her with a written advisement of his or her rights concerning the sealing of his or her criminal justice records

when certain conditions have been met. In cases where charges were not filed, the defendant may only elect to have his or her records sealed if the statute of limitations for the offense has run, or if the statute of limitations has not run but the defendant is no longer being investigated for the offense. The court will not seal records for any case in which an offense is not charged or charges are dismissed due to a plea agreement in a separate case or the defendant still owes restitution, fines, fees, or costs ordered by the court.

State Revenue

This bill increases state cash fund revenue by \$354,408 in FY 2016-17 and by \$402,648 in FY 2017-18 in the Judicial Department's Stabilization Cash Fund. The bill allows the Supreme Court to set fees for the sealing of criminal justice records in amounts necessary to cover the direct and indirect costs of sealing records.

Table 1 shows the anticipated change in fee revenue.

Table 1. Fee Impact Under SB16-116				
Type of Fee	Fee Assessed	Number Affected	Number Paying Fee*	Total Collected
Civil Filing Fee to Seal Records (Current)	\$224	1,859	1,243**	(\$278,432)
Civil Filing Fee to Seal Records (Proposed FY 2016-17)	\$65	14,558	9,736**	\$632,840
FY 2016-17 TOTAL				\$354,408
Civil Filing Fee to Seal Records (Current)	\$224	1,859	1,413	(\$316,512)
Civil Filing Fee to Seal Records (Proposed FY 2017-18)	\$65	14,558	11,064	\$719,160
FY 2017-18 TOTAL				\$402,648

* All figures in this column are the number affected less 24 percent to account for indigence.

** This number has been prorated in the first year to 88 percent to account for the bill's August 10, 2016, effective date.

Assumptions. The fiscal note makes the following assumptions:

- Approximately half of the current 3,717 petitioners seeking to seal records (1,859 cases) will pursue the simplified process for sealing court records.
- Approximately half of the 32,834 defendants potentially eligible to use the simplified process will choose to do so, resulting in 16,416 new cases to be processed. These petitioners include those against whom charges were not filed or were dismissed, or those who were acquitted of all charges.
- Removing the current 3,717 petitioners from the pool of potential new cases leaves 12,699 new petitioners electing at the time of advisement to have their records sealed using the simplified process.

TABOR Impact

This bill increases state cash fund revenue collected from fees, which will increase the amount of revenue required to be refunded under TABOR. TABOR refunds are paid from 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 cash fund expenditures by \$219,653 and 3.5 FTE in FY 2016-17 and by \$246,911 and 4.0 FTE in FY 2017-18 in the Judicial Department.

Cost Components	FY 2016-17	FY 2017-18
Personal Services	\$155,561	\$192,845
FTE	3.5 FTE	4.0 FTE
Operating Expenses and Capital Outlay	22,612	4,750
Centrally Appropriated Costs*	41,480	49,316
TOTAL	\$219,653	\$246,911

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

Personal services. Trial courts require an additional 4.0 FTE (prorated to 3.5 FTE in the first year) for support staff to handle the workload associated with processing requests to seal records. The bill shifts the burden from the petitioner to the court to notify the prosecuting attorney, the arresting agency, and any other person or agency identified by the petitioner of the intent to seal records, and then to provide the Colorado Bureau of Investigation and every custodian of criminal justice records with a copy of the order requiring the records to be sealed. This process results in approximately 30 minutes of additional workload in the clerk's office for each of the 16,416 new petitions to seal records (prorated to 14,446 new petitions in the first year).

Workload. Individuals completing deferred sentences or diversion agreements are not always required to appear before the court upon the completion of their sentence and dismissal of the case. Should this practice change as a result of the option to participate in the simplified process, the Judicial Department may need to seek resources to address additional workload resulting from changes in practice.

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 3.

Table 3. Centrally Appropriated Costs Under SB16-116		
Cost Components	FY 2016-17	FY 2017-18
Employee Insurance (Health, Life, Dental, and Short-term Disability)	\$28,168	\$32,036
Supplemental Employee Retirement Payments	13,312	17,280
TOTAL	\$41,480	\$49,316

Effective Date

The bill takes effect August 10, 2016, if the General Assembly adjourns on May 11, 2016, as scheduled, and no referendum petition is filed, and applies to acts on or after this date.

State Appropriations

For FY 2016-17, the bill requires an allocation of 3.5 FTE and an appropriation of \$178,173 to the Judicial Department from the Judicial Stabilization Cash Fund.

State and Local Government Contacts

District Attorneys
Law

Judicial
Public Safety

Information Technology