



Legislative
Council Staff

Nonpartisan Services for Colorado's Legislature

FISCAL NOTE

Drafting Number: LLS 19-0336
Prime Sponsors: Rep. Weissman; Soper
 Sen. Lee
Date: April 11, 2019
Bill Status: House Judiciary
Fiscal Analyst: Ariel Hammerquist | 303-866-3469
 Ariel.Hammerquist@state.co.us

Bill Topic: INCREASED ELIGIBILITY FOR CRIMINAL RECORD SEALING

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

This bill repeals and reenacts statues related to sealing criminal justice records. This bill increases state revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2019-20, this bill requires appropriations totaling \$711,567 to multiple state agencies.

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

Table 1
State Fiscal Impacts Under HB 19-1275

		FY 2019-20	FY 2020-21
Revenue	Cash Funds	\$579,720	\$607,747
	Total	\$579,720	\$607,747
Expenditures	General Fund	\$210,594	\$174,324
	Cash Funds	\$500,973	\$496,085
	Centrally Appropriated	\$159,486	\$169,480
	Total	\$871,053	\$839,889
Total FTE		7.6 FTE	8.2 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill repeals and reenacts statutes related to sealing criminal records. Under this bill, a defendant may request to make a motion to seal criminal records as part of a criminal case when there is a criminal conviction and without requiring the defendant to file a separate civil action. The bill retains the current record sealing provisions for when no charges are filed or for victims of human trafficking, municipal offences, and posting intimate images of individuals. Criminal justice record sealing is not eligible if the only charges are specified traffic offenses, or for a deferred judgement and sentencing concerning the holder of a commercial driver's license. The bill establishes time frames for when specified petty offense, misdemeanor, or felony record sealing requests may be filed. Finally, the district attorney may object to the criminal justice record sealing, if that occurs the court will set a hearing to determine whether or not to seal the records.

Background and Assumptions

Between 2014 and 2018, approximately 1,785 petitions were filed to seal criminal conviction cases, or on average, 357 civil cases per year. It is estimated that up to 7,498 additional criminal records would be eligible for record sealing under this bill.

State Revenue

Beginning in FY 2019-20, state cash fund revenue to the Department of Public Safety (DPS) and the Judicial Department will increase by \$579,720 in FY 2019-20 and by \$607,747 in FY 2020-21. These impacts are shown in Table 2 and discussed below.

Fee impact on persons requesting record sealing. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The fee changes in the DPS and Judicial Department are shown below.

- *Fingerprint-based background checks.* This bill increases state cash fund revenue from fingerprint-based criminal history background checks to the CBI Identification Unit Cash Fund in the DPS by \$296,171 in FY 2019-20 and future years. This assumes 7,498 checks will be conducted per year. The current background check fee is \$39.50, which includes \$11.25 for a Federal Bureau of Investigation (FBI) fingerprint based check, which is passed on to that federal agency. Background checks are subject to TABOR; however, the federal portion of this fee revenue (\$84,353 per year) is excluded from the state TABOR limit.
- *Civil Filing Fee.* On net, this bill increases revenue to the Judicial Department from civil filing fees by \$283,556 in FY 2019-20 and \$311,600 in FY 2020-21, credited to various cash funds and the General Fund. This change includes a decrease in revenue for the current fees for criminal record sealing cases, which will decrease by \$49,074 per year in FY 2019-20 and \$53,928 in FY 2020-21 and future years. The new fees for the simplified criminal justice sealing process will increase revenue by \$332,630 in FY 2019-20 and \$365,28 in FY 2020-21 and future years. Court fee revenue is subject to TABOR.

**Table 2
 Fee Impacts Under HB 19-1275**

Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
FY 2019-20			
CBI Background Check	\$28.25	7,498	\$211,819
FBI Background Check	\$11.25	7,498	\$84,353
Subtotal - DPS			\$296,171
Civil Filing Fee	(\$224)	219	(\$49,056)
Civil Filing Fee (simplified process)	\$65	5,117	\$332,605
Subtotal - Judicial			\$283,549
FY 2019-20 TOTAL			\$579,720
FY 2020-21			
Background Check	\$28.25	\$7,498	\$211,819
Federal Pass Through - FBI	\$11.25	\$7,498	\$84,353
Subtotal - DPS			\$296,171
Civil Filing Fee	(\$224)	241	(\$53,984)
Civil Filing Fee (simplified process)	\$65	5,624	\$365,560
Subtotal - Judicial			\$311,576
FY 2020-21 TOTAL			\$607,747

State Expenditures

Beginning in FY 2019-20, state expenditures will increase \$871,053 and 7.6 FTE in FY 2019-20 and \$839,889 and 8.2 FTE in FY 2020-21. These impacts in the DPS and the Judicial Department are shown in Table 3 and discussed below.

**Table 3
 Expenditures Under HB 19-1275**

	FY 2019-20	FY 2020-21
Department of Public Safety		
Personal Services	\$308,363	\$336,396
Operating Expenses and Capital Outlay Costs	\$108,257	\$159,689
Reappropriated Federal Funds	\$84,353	-
Centrally Appropriated Costs*	\$118,111	\$128,690
FTE – Personal Services	6.8 FTE	7.4 FTE
DPS Subtotal	\$619,084	\$624,775

Table 3
Expenditures Under HB 19-1275 (Cont.)

Judicial Department		
Personal Services	\$145,419	\$158,639
Operating Expenses and Capital Outlay Costs	\$65,175	\$15,685
Centrally Appropriated Costs*	\$41,375	\$40,790
FTE – Personal Services	1.8 FTE	1.8 FTE
Judicial Subtotal	\$251,969	\$215,114
Total Cost	\$871,053	\$839,889
Total FTE	7.6 FTE	8.2 FTE

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

Department of Public Safety. This bill increases expenditures from the CBI Identification Unit Cash Fund in DPS by \$619,084 and 6.8 FTE in FY 2019-20 and \$624,775 and 7.4 FTE in FY 2020-21.

- *Personal services.* Beginning in FY 2019-20, DPS will require 1.0 FTE Fingerprint Examiner and 6.4 FTE Data Specialist to process the 7,498 fingerprint background applications. These employees will undertake a one-time training session that costs \$1,000 per person.
- *Federal Bureau of Investigation pass-through.* The DPS passes \$11.25 of every application on to the federal government. With 7,498 applications, this equates to \$84,353 per year.
- *Other costs.* The DPS will have various other costs associated with each background check application, including \$6.10 dedicated to equipment maintenance; \$1.55 for print digitization; \$0.88 to access the Colorado Crime Information Center for information pertinent to the background check; and \$0.58 printing and postage costs.

Judicial Department. The bill increases General Fund expenditures in the Judicial Department by \$251,969 and 1.8 FTE in FY 2019-20 and \$215,114 and 1.8 FTE in FY 2020-21 and future years. To handle the increased hearing volume for record sealing, the trial courts require 0.6 FTE for magistrates and 1.2 FTE for support staff. Costs and FTE in FY 2019-20 are prorated for the General Fund pay date shift. Standard judge operating and capital outlay costs for judges are included for the magistrate, including law library materials, travel expenses, judge robe expenditures, and computer hardware and software. Costs in the first year are also included for courtroom furnishings for the magistrate chambers, law library, jury room, and conference room. These costs are based on the Judicial Department common policy costs. Standard operating and capital outlay costs for state employees are included for the support staff.

Representation for persons who are indigent. Costs and workload may also increase in the Office of the State Public Defender and the Alternative Defense Council to raise record sealing matters during certain criminal case. It is assumed that these impacts will be addressed through the annual budget process, if necessary

Centrally appropriated costs. Pursuant to 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 estimated to be \$159,486 in FY 2019-20 and \$169,480 in FY 2020-21.

Local Government

Overall, this bill is expected to increase local government costs and workload starting in FY 2019-20, as described below. The exact impact to a particular local government will vary by judicial district. These impacts have not been estimated.

District attorneys. The bill will increase costs and workload for district attorneys to review case files and attend hearing when there are objections. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

Denver County Court. The bill increases costs and workload for the Denver County Court, managed and funded by the City and County of Denver to meet the requirements under the bill.

Effective Date

The bill takes effect August 1, 2019.

State Appropriations

For FY 2019-20, this bill requires the following appropriations:

- \$500,973 to the DPS from the CBI Identification Unit Cash Fund and an allocation of 6.8 FTE, of which \$84,353 is passed through to the federal government as reappropriated funds; and
- \$210,594 General Fund and an allocation of 1.8 FTE to the Judicial Department.

State and Local Government Contacts

Counties
Local Affairs
Sheriffs

District Attorneys
Municipalities

Judicial
Public Safety