



## Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

# Revised Fiscal Note

(replaces fiscal note dated April 8, 2024)

<b>Drafting Number:</b>	LLS 24-0738	<b>Date:</b>	April 11, 2024
<b>Prime Sponsors:</b>	Rep. Mabrey; Soper Sen. Rodriguez	<b>Bill Status:</b>	House Appropriations
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### Bill Topic: **CRIMINAL RECORD SEALING & EXPUNGEMENT CHANGES**

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

The bill makes several changes to the process to seal or expunge a criminal record. Starting in FY 2025-26, the bill decreases state revenue and increases state and local expenditures.

**Appropriation Summary:** No appropriation is required.

**Fiscal Note Status:** This revised fiscal note reflects the introduced bill, as amended by the House Judiciary Committee. It has been revised to reflect new sealing caseload information.

**Table 1**  
**State Fiscal Impacts Under HB 24-1133**

		<b>Budget Year FY 2024-25</b>	<b>Out Year FY 2025-26</b>	<b>Out Year FY 2026-27</b>
<b>Revenue</b>	Cash Funds	-	(\$57,749)	(\$57,749)
	<b>Total Revenue</b>	-	<b>(\$57,749)</b>	<b>(\$57,749)</b>
<b>Expenditures</b>	General Fund	-	\$778,010	\$250,350
	Centrally Appropriated	-	\$48,580	\$48,580
	<b>Total Expenditures</b>	-	<b>\$826,590</b>	<b>\$298,930</b>
	<b>Total FTE</b>	-	<b>2.0 FTE</b>	<b>2.0 FTE</b>
<b>Transfers</b>		-	-	-
<b>Other Budget Impacts</b>	TABOR Refund	-	(\$57,749)	not estimated
	General Fund Reserve	-	\$116,701	\$37,552

## **Summary of Legislation**

The bill makes several changes to the process to access, seal, or expunge a criminal record, as outlined below.

**Mistaken identity.** The bill allows defendants in a mistaken identity case to petition the court to expunge the arrest and criminal records if the law enforcement agency fails to submit a petition. A person filing for expungement must not be charged any fees or cost associated with expunging the record.

**Attorney access to sealed records.** The bill allows attorneys to access a sealed criminal justice record if the defendant has given written permission and the attorney is accessing the record to provide legal advice. In addition, a law enforcement agency is allowed to release redacted criminal justice records that are the subject of discovery and, if records are released, the court must issue a protective order regarding the records.

**Remote participation.** The bill allows for remote participation in record sealing hearings.

**Sealing when there are no charges filed.** In cases where a person is seeking to seal an arrest record when no charges are filed, the court must order the records sealed when the district attorney notifies the court that the person qualifies to have their records sealed. If this does not occur, a defendant may petition the court to seal the record.

**Sealing when there is no conviction.** The bill moves up the date for a sealing motion when a victim objects to sealing from 42 days to 35 days and does not require the defendant to appear in cases that are dismissed, or where the defendant is acquitted, completes a diversion agreement, or completes a deferred judgement and sentence. Charges that are dismissed due to competency issues are not eligible.

**Multiple conviction sealing.** The bill allows defendants to file a motion to seal all convictions records in a single case when the records are in the same jurisdiction, and requires the defendant to identify the other cases.

**Sealing when the law changes.** The bill allows a defendant to file, at no cost, a motion with the court to seal a conviction for an offense that is no longer prohibited by statute and to provide notice of the motion to the district attorney. The district attorney may only object to the record sealing when they have a good-faith belief that the offense seeking to be sealed is still illegal. If the district attorney does not object within 42 days after the date of the motion, the court must order the record sealed regardless of other convictions on the defendant's record. The bill also allows the court to determine eligibility for certain marijuana offenses as they existed before 1992, 2010, and 2013.

**Automatic sealing of historical deferred judgments, acquittals, and diversion cases.** By July 1, 2025, the bill requires the State Court Administrator to compile a list of deferred judgments, acquittals, and diversion cases prior to August 2022, and send the relevant list to the chief judge of each judicial district. The district courts are required to enter sealing orders based on this list within 14 days of receipt, and to send a copy of the sealing order to the relevant

district attorney's office. The district attorney's offices are required to enter sealing orders upon receipt of these court orders. Finally, the State Court Administrator must electronically send all orders to seal these records to the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (CDPS) via data transfer. Upon receipt, the CBI must seal the records.

## 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 sealing process.** [House Bill 21-1214](#) established a process to automatically seal certain criminal records related to drug offenses and [Senate Bill 22-099](#) expanded the offenses for eligible for automatic sealing to 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. Current law requires the State Court Administrator to compile lists for everyone eligible to have their record sealed and to forward that list to the chief judge of each judicial district, the district attorney, and the CBI and for each of these entities to seal the identified the records.

**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.

## **Assumptions**

**Expanded sealing.** Based on Judicial Department data, the fiscal note assumes there will be about 2,400 cases where there is a non-conviction record associated with a traffic offense that would be eligible for sealing under the bill, and 2,200 cases where a record was not sealed at the time of the district attorney's notice. The fiscal note assumes impacts related to expanded sealing will take effect on July 1, 2025, based on the bill's effective date.

**Automatic sealing.** According to the Judicial Department, there have been about 348,000 cases filed through August 2022 denoting a successful competition of deferred judgement or diversion agreement, or acquittal of an offense eligible to automatic sealing. The fiscal note assumes automatically sealing these cases will begin January 1, 2026—see Technical Note.

## **State Revenue**

Starting in FY 2025-26, cash fund revenue to various cash funds in the Judicial Department will decrease by an estimated \$57,749 per year. This revenue loss results from allowing a defendant to file a single motion to seal multiple records within the same jurisdiction. In addition, fee revenue may minimally decrease from waiving record sealing fees in cases involving mistaken identity or when a law changes. Finally, to the extent changes in the bill reduces requests for criminal histories, revenue to the CBI Identification Unit Cash Fund will decrease. Revenue to Judicial Department and the CBI cash funds is subject to the state's TABOR revenue limit.

## **State Expenditures**

The bill increases state General Fund expenditures by \$827,000 in FY 2025-26 and \$299,000 in FY 2026-27 in the Judicial Department and CDPS. Expenditures are shown in Table 2 and detailed below.

**Table 2**  
**Expenditures Under HB 24-1133**

	FY 2024-25	FY 2025-26	FY 2026-27
<b>Judicial Department</b>			
Personal Services	-	\$35,505	\$35,505
Operating Expenses	-	\$475	\$875
Capital Outlay Costs	-	\$7,200	-
Contract Staff	-	\$112,270	\$112,270
Computer Programing	-	\$507,520	-
Centrally Appropriated Costs <sup>1</sup>	-	\$9,442	\$9,442
FTE – Personal Services	-	0.5 FTE	0.5 FTE
<b>Judicial Subtotal</b>	<b>-</b>	<b>\$672,412</b>	<b>\$158,092</b>
<b>Department of Public Safety</b>			
Personal Services	-	\$99,780	\$99,780
Operating Expenses	-	\$1,920	\$1,920
Capital Outlay Costs	-	\$13,340	-
Centrally Appropriated Costs <sup>1</sup>	-	\$39,137	\$39,137
FTE – Personal Services	-	1.5 FTE	1.5 FTE
<b>DPS Subtotal</b>	<b>-</b>	<b>\$154,177</b>	<b>\$140,837</b>
<b>Total</b>	<b>-</b>	<b>\$826,590</b>	<b>\$298,930</b>
<b>Total FTE</b>	<b>-</b>	<b>2.0 FTE</b>	<b>2.0 FTE</b>

<sup>1</sup> Centrally appropriated costs are not included in the bill's appropriation.

**Judicial Department.** The bill increases expenditures in the Judicial Department by about \$672,000 in FY 2025-26 and \$158,000 in FY 2026-27 to hire additional FTE and contract staff, and to make information technology upgrades, as described below.

- **Staffing.** The Judicial Department requires 0.5 FTE to process record sealing for traffic cases that also contain a dismissed charge, and automatically sealing records when a district attorney notifies charges will not be filed. As outlined in the Assumptions section, it is estimated that there will be 2,400 dismissed traffic cases that will take approximately 20 minutes to seal and redact throughout the system, and 2,200 cases that a district attorney will notify the court for sealing that will take 5 minutes to process. Staff costs assume a July 1, 2025, start date, and include standard operating and capital outlay costs.

- **Contract staffing.** The Judicial Department requires one-time contract staffing to serve copies of the automatic record sealing order to an estimated 348,000 former defendants. Work will also include maintaining a record of undelivered documents. It is assumed that 70 percent of orders will have an outdated address and require an additional 2 minutes per case to open, scan, and upload documents to maintain a record of undelivered documents. Contract staff will work for 11 months beginning January 1, 2026, based on the assumption it will take 6 months to make the necessary computer program changes—see Technical Note.
- **IT modifications.** In FY 2025-26 only, the Judicial Department requires \$507,520 to upgrade the department's system to identify, seal, and electronically transfer to the CBI all deferred judgment, acquittal, and diversion cases prior to August 2022. Costs assume six months of a senior software engineer, quality assurance analyst, and business analyst.

**Department of Public Safety.** The bill increases expenditures in the CBI by about \$154,000 in FY 2025-26 and \$141,000 in FY 2026-27 and ongoing, as described below.

- **Staffing.** The CBI requires 1.5 FTE to process sealing requests for traffic offenses and non-conviction cases, based on the number of cases outlined in the Assumptions section above and assuming it takes about 40 minutes on average to seal a record. The fiscal note assumes that the remaining cases will be automatically sealed and require no additional CBI staff, as outlined below.
- **Automatic sealing.** Based on the fiscal note for Senate Bill 22-099, this fiscal note assumes that no additional FTE is required to automatically seal cases sent via data transfer by the Judicial Department. The department is currently in the process of implementing SB 22-099. The fiscal note for that bill assumed that staff was not required due to the development of an electronic transfer of data to allow for a more streamlined record sealing process. To date, the CBI reports that the development of an electronic transfer has not occurred. The fiscal note assumes that if additional funds are needed to ensure that data is transferred electronically, this will be requested through the annual budget process.

**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, lease space cost for the Department of Public Safety, 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 above. This estimate assumes the March 2024 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2025-26. 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. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve by the amounts shown in Table 1, decreasing the amount of General Fund available for other purposes.

## Local Government

Similar to the state, costs to district attorneys, municipal courts, and the Denver County Court will increase to seal cases.

## Technical Note

The bill takes effect on July 1, 2025; however, it is estimated that the Judicial Department's information technology modifications will take 6 months to complete before a list for automatic sealing can be made. Therefore, the fiscal note assumes that the process to begin automatic sealing will not begin until January 1, 2026.

## Effective Date

The bill takes effect July 1, 2025, assuming no referendum petition is filed.

## Departmental Difference

The CBI estimates it requires an additional \$32.8 million in FY 2025-26. The CBI assumes that 1.0 FTE can seal 1,167 records per year, which equates to about 1 hour and 45 minutes per case; and that staff are required to seal the 348,000 cases received automatically from the Judicial Department, resulting in a need of 335 FTE (including 298 FTE to perform the work and 37 FTE supervisors). The fiscal note assumes that the amount of time to seal a record is about 40 minutes and that the process will be automatic and not manual, using the system created through Senate Bill 22-099. If additional resources are required to complete the process established by SB 22-099, these should be sought through the annual budget process.

## State and Local Government Contacts

Corrections  
Judicial

District Attorneys  
Public Safety

Human Services  
Revenue

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The revenue and expenditure impacts in this fiscal note represent changes from current law under the bill for each fiscal year. For additional information about fiscal notes, please visit the [General Assembly website](#).