

Initiative # 204



Legislative Council Staff

Nonpartisan Services for Colorado's Legislature

INITIAL FISCAL IMPACT STATEMENT

Date: February 4, 2020

Fiscal Analyst: Aaron Carpenter (303-866-4918)

LCS TITLE: EXPUNGEMENT OF ELIGIBLE CRIMINAL RECORDS

Fiscal Impact Summary		FY 2020-21	FY 2021-22
Revenue	Cash Funds	\$1,574,694	\$3,149,163
	Total	\$1,574,694	\$3,149,163
Expenditures	General Fund	\$2,279,843	\$3,988,210
	Cash Funds	\$1,574,694	\$3,149,163
	Total	\$3,854,537	\$7,137,373

***Disclaimer.** This initial fiscal impact statement has been prepared for the Title Board. If the initiative is placed on the ballot, Legislative Council Staff may revise this estimate for the ballot information booklet (Blue Book) if new information becomes available.*

Summary of Measure

This measure creates a new expungement process for individuals who have completed their criminal sentence, were not convicted of a crime, or were granted clemency. Expungement of records applies retroactively.

The measure establishes which crimes are eligible for expungement, how long the expungement period is for each crime, and what the expungement fee is for each crime. Expungement periods are periods of time that an individual must wait before they have their record expunged after completion of their sentence. Expungement fees are imposed and due when an individual is convicted of a crime. If an individual cannot pay the fee, interest will accrue at a rate of 5 percent per year. If an individual is found to be indigent by a court, the expungement fee may be waived, depending on the crime, and an individual may immediately or following their release from incarceration, enter into a life skills development program that is established in the Department of Public Safety.

Finally, the measure specifies the programs, program funds, and oversight boards that are funded by the revenue earned on the expungement fee. These programs include both existing and newly created programs in multiple agencies.

Assumptions

Based on data provided by the Judicial Department, this fiscal impact statement assumes that in the first full year of implementation, there will be 81,388 cases that are retroactively eligible for expungement for which no expungement fee is required, and 16,275 cases each year that will become eligible for expungement. Further, 75 percent of convicted individuals are assumed to be indigent and will not be required to pay a fee; the fiscal note assumes these individuals will choose

to enter into the life skills program instead. Finally, it is assumed that the custodians of records adhere to the law and therefore, any impact from the crime of not destroying records will be minimal.

State Revenue

Under the measure, state cash fund revenue will increase by \$1.6 million in FY 2020-21 (half-year impact) and \$3.1 million in FY 2021-22, as shown in Table 1 below. These estimates are based on the assumptions discussed above. Offenses that are eligible for expungement are categorized by the expungement fee amount set in the measure. Table 1 also provides assumed collection rates based on Judicial Department data on existing fees and fines, ranging from 3 to 6 percent. This fiscal impact statement does not provide an estimate on how much interest will be collected from unpaid fees.

**Table 1
State Revenue Under Initiative #204**

Fiscal Year 2020-21			
Expungement Fee	Payers	Collection Rate	Total
\$250	78	6%	\$1,170
\$350	274	6%	\$5,754
\$500	4,907	6%	\$147,210
\$750	448	6%	\$20,160
\$1,000	5,493	6%	\$329,580
\$1,500	110	4%	\$6,600
\$2,000	940	4%	\$75,200
\$2,500	2,626	4%	\$262,600
\$3,000	1,380	4%	\$165,600
\$4,000	27	4%	\$4,320
\$5,000	3,581	3%	\$537,150
\$7,500	86	3%	\$19,350
			\$1,574,694

**Table 1
State Revenue Under Initiative #204 (Cont.)**

Fiscal Year 2021-22			
Expungement Fee	Payers	Collection Rate	Total
\$250	156	6%	\$2,340
\$350	548	6%	\$11,508
\$500	9,813	6%	\$294,390
\$750	897	6%	\$40,365
\$1,000	10,986	6%	\$659,160
\$1,500	220	4%	\$13,200
\$2,000	1,880	4%	\$150,400
\$2,500	5,252	4%	\$525,200
\$3,000	2,758	4%	\$330,960
\$4,000	54	4%	\$8,640
\$5,000	7,162	3%	\$1,074,300
\$7,500	172	3%	\$38,700
			\$3,149,163

State Expenditures

The measure will increase state General Fund and cash fund expenditures by an estimated \$3.9 million in FY 2020-21 and \$7.1 million in FY 2021-22, as shown in Table 2 and discussed below.

**Table 2
State Expenditures Under Initiative #204**

Cost Components	FY 2020-21	FY 2021-22
Judicial Department		
Personal Services	\$323,073	\$682,416
Operating Expenses	\$9,450	\$16,605
Capital Outlay Costs	\$43,400	-
IT Services	\$311,040	-
Contract Probation Staff	\$169,637	-
Other Costs	\$91,841	\$194,519
FTE – Personal Services	5.8 FTE	12.3 FTE
Judicial (Subtotal)	\$948,441	\$893,540

**Table 2
State Expenditures Under Initiative #204 (Cont.)**

Department of Public Safety		
Personal Services	\$47,216	\$134,302
Operating Expenses	\$1,330	\$3,040
Capital Outlay Costs	\$6,200	-
Life Skills Program	\$1,780,839	\$3,561,677
Other Costs	\$16,306	\$47,159
FTE – Personal Services	1.1 FTE	3.2 FTE
DPS (Subtotal)	\$1,851,891	\$3,746,178
Program Funding		
Expenditure of Fee Revenue*	\$1,054,205	\$2,497,655
Program Funding (Subtotal)	\$1,054,205	\$2,497,655
Total	\$3,854,537	\$7,137,373
Total FTE	6.9 FTE	15.5 FTE

* A portion of this expenditure may be used to cover costs incurred by the Judicial Department and Department of Public Safety.

Judicial Department. Judicial Department expenditures are expected to increase by \$948,441 in FY 2020-21 and \$893,540 in FY 2021-22. Some of this funding will come from cash funds created by the measure to help cover administration costs; the remainder is from the General Fund.

- *Personal services, operating, capital outlay, and other costs.* Personal services cost includes salary and benefit payments. Standard operating and capital outlay costs include ongoing supplies and one-time furniture and computer costs per FTE. Other personnel-related costs include costs for employee insurance and supplemental retirement costs. FY 2020-21 are prorated for a January 1 start date and the General Fund paydate shift.

The measure requires 4.0 FTE to expunge newly eligible cases and retroactively eligible cases in FY 2020-21 based on the assumed number of retroactive and future eligible cases discussed in the Assumptions section. The 4.0 FTE is reduced to 2.3 FTE in FY 2021-22 to account for a reduction in staff needs after the initial influx of retroactive cases; and staff will be further reduced in subsequent fiscal years to manage the ongoing expungement-related workload. In addition to FTE for expunging records, 10.0 FTE for additional collection staff and support staff is necessary to ensure that individuals pay the expungement fee. Duties for these staff members include creating payment plans, doing interest assessments, monitoring new cases, and enforcing the new fee.

- *IT Services.* In FY 2020-21 only, expenditures in the Judicial Department will increase by \$311,040 in order to develop new IT systems in order to track expungement fee payments and interest. It is estimated that this work will require 4 contractors working for 18 weeks at a rate of \$108 per hour.

- *Contract probation staff.* To expunge records by the deadline laid out in the measure, the Probation Division in the Judicial Department will need to hire contract workers for six months at an estimated cost of \$169,637. This increase expenditures occurs in FY 2020-21 only.

Department of Public Safety. The measure will increase expenditures in the Department of Public Safety by \$1.9 million in FY 2020-21 and 3.7 million in FY 2021-22, as described below.

- *Personal services, operating, and capital outlay, other costs.* The measure is expected to require 2.7 FTE in FY 2020-21 to conduct background checks on all eligible cases for expungement. This amount is prorated due to the January 1st start date and the General Fund paydate shift. In FY 2021-22, 3.2 FTE is necessary for background checks based on the assumed number of retroactive and future eligible cases. Personal services cost includes salary and benefit payments, operating expenses includes costs for supplies, and capital outlay cost includes office equipment such as furniture and a computer. Other personnel related costs include costs for employee insurance and supplemental retirement costs.
- *Life Skills program.* The measure is expected to increase expenditures in the Public Safety by \$1.8 million in FY 2020-21 and \$3.6 million in FY 2021-22, to establish a Life Skills program. This amount is based on the current budgeted amount for the Department of Public Safety to run the Juvenile Diversion Program. Of this amount, it is estimated that some costs will be covered through the Life Skills Development Cash Fund created in this measure.

Programs funded by expungement fee. State expenditures in a variety of agencies will increase by \$1.1 million in FY 2020-21 and by \$2.5 million in FY 2021-22. The exact expenditure amount to each program and department will depend on the amount specified in the measure from expungement fee collections, and expenditures will include program administration costs. For existing programs, funding levels and expenditures will increase. This fiscal impact statement assumes that any additional staff requirements for existing programs or leased space requirements, as necessary, will be requested through the annual budget process.

Other state department costs and workload. Starting in FY 2020-21, expenditures in other departments may increase depending on the number of cases needing to be expunged from each department's records, such as the Department of Revenue which manages records related to traffic offenses. In addition, this fiscal impact statement assumes that state departments have the technological capability to expunge records. If any adjustments to technology are necessary, expenditures will also increase.

Potential cost savings. Costs in the Department of Corrections may be reduced in future fiscal years as second offenses where a record is expunged will be charged under the lower offense category. Any change to the state's prison population will be addressed through the annual budget process.

Local Government Impact

Starting in FY 2020-21, revenue and expenditures will increase for local governments. Revenue will increase due expungement fee revenue being earmarked for distribution to local county treasurers. Expenditures will increase in order to expunge records and to hold additional court hearings.

In future fiscal years, similar to the state, county jail costs may be reduced as a result of record expungement leading to changes in sentencing.

Economic Impact

The measure may impact the state economy in two main ways. First, to the extent expungement of criminal records increases employment opportunity for persons previously convicted of a crime, personal income and spending in the economy will increase by these individuals. However, these gains may be offset by reduced employment among persons in other segments of the population who would have otherwise been employed in the same positions. Second, by mandating that new expungement fees be paid by all persons convicted of a crime, with exceptions for indigency, the measure increases the debt payment obligations by persons convicted of a crime, which will reduce spending elsewhere in the economy. Overall, the economic impact of the measure is indeterminate.

Effective Date

If approved by voters at the 2020 general election, this measure takes effect upon proclamation of the Governor, no later than 30 days after the official canvass of the vote is completed.

State and Local Government Contacts

Corrections
Human Services
Local Affairs
Natural Resources
Secretary of State
Higher Education

Counties
Judicial
Information Technology
Public Safety
Sheriffs
Education

District Attorneys
Law
Municipalities
Revenue
Military Affairs

Abstract of Initiative 204: EXPUNGEMENT OF ELIGIBLE CRIMINAL RECORDS

The abstract includes estimates of the fiscal impact of the proposed initiative. If this initiative is to be placed on the ballot, Legislative Council Staff will prepare new estimates as part of a fiscal impact statement, which includes an abstract of that information. All fiscal impact statements are available at www.ColoradoBlueBook.com and the abstract will be included in the ballot information booklet that is prepared for the initiative.

This initial fiscal estimate, prepared by the nonpartisan Director of Research of the Legislative Council as of February 4, 2020 identifies the following impacts:

State revenue. Initiative #204 increases state cash fund revenue by \$1.6 million in FY 2020-21 and by \$3.1 million in FY 2021-22 by charging expungement fees to persons convicted of certain crimes.

State expenditures. Initiative #204 increases state expenditures by \$3.9 million and by \$7.1 million in FY 2021-22, primarily in the Judicial Department and the Department of Public Safety. In addition, workload will increase in various agencies to expunge records.

Local government impact. Revenue from the state expungement fee will be shared with local governments and expenditures will increase to expunge records held by local governments.

Economic impacts. The measure may impact the state economy in two main ways. First, to the extent expungement of criminal records increases employment opportunity for persons previously convicted of a crime, personal income and spending in the economy will increase by these individuals. However, these gains may be offset by reduced employment among persons in other segments of the population who would have otherwise been employed in the same positions. Second, by mandating that new expungement fees be paid by all persons convicted of a crime, with exceptions for indigency, the measure increases the debt payment obligations by persons convicted of a crime, which will reduce spending elsewhere in the economy. Overall, the economic impact of the measure is indeterminate.