



**Colorado
Legislative
Council
Staff**

HB17-1208

**REVISED
FISCAL NOTE**

(replaces fiscal note dated March 15, 2017)

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

Drafting Number: LLS 17-0949
Prime Sponsor(s): Rep. Weissman

Date: April 5, 2017
Bill Status: House Finance
Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: RECORD SEALING CLARIFICATIONS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	at least \$103,750	at least \$124,511
Cash Funds	at least 103,750	at least 124,511
State Expenditures	Workload increase.	
TABOR Impact	at least \$103,750	at least \$124,511
Appropriation Required: None.		
Future Year Impacts: Ongoing increases in state revenue and workload.		

Summary of Legislation

This bill, **as amended by the House Judiciary Committee**, clarifies the process for sealing certain criminal records following the creation of a simplified process under Senate Bill 16-116. It states that arrest or criminal record information may not be sealed in cases where a dismissal occurs as part of a plea agreement in a separate case if a conviction has been entered. It specifies that a person in interest may petition a district court for record sealing if he or she has not been convicted of, rather than charged with, a criminal offense in the ten years since the date of the final disposition of all criminal proceedings against the person.

Victims' rights. The bill allows district attorneys or law enforcement agencies to release police reports or protection orders to victims if the victim can demonstrate a need for the records for a lawful purpose. If the defendant is acquitted or if the case is dismissed and a hearing is required by victims' rights law before records can be sealed, the court must allow the district attorney the opportunity to notify the victim and must set a date for a hearing on the sealing motion no later than 42 days after receipt of the motion.

Simplified process for sealing records. The bill clarifies that motions filed under the simplified process for sealing criminal justice records are procedural in nature and that sealing applies retroactively for all eligible cases when the case has been dismissed or the defendant acquitted of all counts. When the court seals criminal justice records using the simplified process, it must provide a copy of the court order to the Colorado Bureau of Investigation (CBI), and the defendant must pay CBI record sealing fees. The defendant must provide a list of all agency custodians who may have custody of criminal records. The bill allows the court to waive the

\$65 simplified record sealing fee in cases of indigency. It clarifies that when the motion to seal a criminal case is filed in state court, the fees collected are credited to the Judicial Stabilization Fund but when the motion to seal records is filed in municipal court, the fees collected are transmitted to the municipality.

Background

Senate Bill 16-116 created the simplified process for sealing criminal justice records. Although it set the fee for sealing records to be charged by the Judicial Department at \$65, the bill contained no reference to a fee for CBI, which currently charges other individuals eligible to seal arrest records a fee of \$27.98. The increase in requests received by CBI as a result of SB16-116 led the Department of Public Safety to seek cash fund spending authority and FTE through the annual budget process. The department's FY 2016-17 supplemental budget request was approved for an increase of \$43,869 cash funds and 2.3 FTE.

State Revenue

Beginning in FY 2017-18, this bill will increase state revenue in the CBI Identification Unit Cash Fund in the Department of Public Safety by at least \$124,511 per year after full implementation. It may also increase revenue in the Judicial Department by a minimal amount.

Assumptions. In the first six months since the simplified process went into effect in August of 2016, CBI has received 1,854 requests to seal records, for which it has charged no fees. The fiscal note assumes that CBI will receive approximately 4,450 requests per year to seal records, an estimate based on the actual requests received to date plus an additional 20 percent to account for increased utilization of the simplified process as it becomes more familiar and the expanded eligibility of cases under HB17-1208. The revenue estimate for FY 2017-18 of \$103,750 has been prorated to account for the bill's September 1, 2017, effective date.

Fee impact on individuals. The bill requires defendants using the simplified process to pay a fee to CBI for sealing records, which is currently set at \$27.98. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. The total fee impact is an estimate only, actual revenue will depend upon the number of requests to seal records. The table below identifies the fee impact of this bill, starting in FY 2017-18.

Table 1. Fee Impact on Individuals under HB17-1208					
Type of Fee	Current Fee	Proposed Fee	Fee Change	Number Affected	Total Fee Impact
Record sealing fee	\$0	\$27.98	\$27.98	3,708	\$103,750
FY 2017-18 TOTAL					\$103,750
Record sealing fee	\$0	\$27.98	\$27.98	4,450	\$124,511
FY 2018-19 and future years TOTAL					\$124,511

Judicial Department. Because the Judicial Department has been charging a fee to seal records using the simplified process since the passage of SB16-116, the fiscal note assumes only a minimal increase in revenue as a result of the expanded eligibility under HB17-1208.

TABOR Impact

This bill increases state cash fund revenue from fees, which will increase the amount of money required to be refunded under TABOR for FY 2017-18 and FY 2018-19. TABOR refunds are paid out of 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

Beginning in FY 2017-18, this bill increases workload in the Judicial Department and the Department of Public Safety to process additional requests to seal records from cases that become newly eligible. This increase is expected to be minimal and does not require any change in appropriations.

Local Government Impact

This bill will affect local governments in several ways, as discussed below.

District attorneys. The bill increases workload for district attorneys, who will have to contact victims and law enforcement and appear in court when requests to seal records are made.

Municipal courts. The bill increases revenue for municipalities in any case in which an individual moves in municipal court to have his or her criminal records sealed and pays the fee. To the extent that the bill increases the number of requests to seal municipal court records, it will also increase workload for municipal courts.

Denver County Court. The bill increases workload for Denver County Court to seal records. Fee revenue collected in Denver County Court is transmitted to the Judicial Stabilization Cash Fund in the Judicial Department.

Effective Date

The bill takes effect September 1, 2017, if no referendum petition is filed.

State and Local Government Contacts

District Attorneys
Municipalities

Information Technology
Public Safety

Judicial