



Legislative
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HB 19-1275

**REVISED
FISCAL NOTE**

(replaces fiscal note dated April 11, 2019)

Drafting Number: LLS 19-0336
Prime Sponsors: Rep. Weissman; Soper
 Sen. Lee
Date: April 23, 2019
Bill Status: House Appropriations
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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 \$491,208 to multiple state agencies.

Fiscal Note Status: The revised fiscal note reflects the introduced bill as amended by the House Judiciary Committee.

**Table 1
State Fiscal Impacts Under HB 19-1275**

		FY 2019-20	FY 2020-21
Revenue	Cash Funds	\$661,175	\$684,847
	Total	\$661,175	\$684,847
Expenditures	Cash Funds	\$491,208	\$380,565
	Centrally Appropriated	\$148,301	\$144,330
	Total	\$639,509	\$524,895
	Total FTE	7.4 FTE	7.4 FTE
Transfers		-	-
TABOR Refund		-	-

Summary of Legislation

This bill repeals and reenacts statutes related to sealing criminal records. This bill creates a simplified record sealing process by allowing a defendant to request 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 offenses, 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. In addition, criminal justice record sealing is not eligible for a felony crime related to the victims bill of rights offenses. 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 record sealing request, 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. Under this bill an estimated 65,146 cases annually will be eligible for record sealing. It is assumed that in 10 percent or 6,515 of these cases the defendant will file a motion to seal records. Assuming a 25 percent indigence factor, 4,446 individuals will pay the \$65 filing fee. In addition, 321 of the current civil cases involve defendants who will switch to the new method rather than file in civil court. Assuming a 25 percent indigence factor, 219 individuals will no longer pay the \$224 filing fee.

The fiscal note assumes that the Colorado Bureau of Investigation (CBI) in the Department of Public Safety (DPS) will conduct background checks for all 6,515 of these sealing record requests. It is further assumed that the court will annually order sealing in 90 percent of 5,864 of these cases.

State Revenue

Beginning in FY 2019-20, state cash fund revenue to the DPS and the Judicial Department will increase by \$661,175 in FY 2019-20 and by \$684,847 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.

- *Department of Public Safety.* This bill increases state cash fund revenue in the DPS by \$421,241 in FY 2019-20 and future years for background checks and record sealing fees. This assumes 6,515 background 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. In total, \$257,343 is generated from additional background checks deposited into the CBI Identification Unit Cash Fund. Background checks are subject to TABOR; however, the federal portion of this fee revenue (\$73,294 per year) is excluded from the state TABOR limit. The record sealing fee is \$27.95 and is deposited into the CBI Identification Unit Cash Fund. An additional \$163,899 is generated from these fees.

- Civil Filing Fee.* On net, this bill increases revenue to the Judicial Department from civil filing fees by \$239,934 in FY 2019-20 and \$263,606 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 \$49,056 per year in FY 2019-20 and \$53,984 in FY 2020-21 and future years. The new fees for the simplified criminal justice record sealing process will increase revenue by \$288,990 in FY 2019-20 and \$317,590 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	6,515	\$184,049
FBI Background Check	\$11.25	6,515	\$73,294
CBI Record Sealing Fee	\$27.95	5,864	\$163,899
Subtotal - DPS			\$421,241
Civil Filing Fee	(\$224)	219	(\$49,056)
Civil Filing Fee (simplified process)	\$65	4,446	\$288,990
Subtotal - Judicial			\$239,934
		FY 2019-20 TOTAL	\$661,175
FY 2020-21			
Background Check	\$28.25	6,515	\$184,049
Federal Pass Through - FBI	\$11.25	6,515	\$73,294
CBI Record Sealing Fee	\$27.95	5,864	\$163,899
Subtotal - DPS			\$421,241
Civil Filing Fee	(\$224)	241	(\$53,984)
Civil Filing Fee (simplified process)	\$65	4,886	\$317,590
Subtotal - Judicial			\$263,606
		FY 2020-21 TOTAL	\$684,847

State Expenditures

Beginning in FY 2019-20, state expenditures will increase \$639,509 and 7.4 FTE in FY 2019-20 and \$524,895 and 7.4 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	\$299,877	\$299,877
Operating Expenses and Capital Outlay Costs	\$70,676	\$37,755
FBI Pass-Through	\$73,294	-
Centrally Appropriated Costs*	\$134,263	\$130,510
FTE – Personal Services	6.6 FTE	6.6 FTE
DPS Subtotal	\$578,110	\$468,142
Judicial Department		
Personal Services	\$41,898	\$41,898
Operating Expenses and Capital Outlay Costs	\$5,463	\$1,035
Centrally Appropriated Costs*	\$14,038	\$13,820
FTE – Personal Services	0.8 FTE	0.8 FTE
Judicial Subtotal	\$61,399	\$56,753
Total Cost	\$639,509	\$524,895
Total FTE	7.4 FTE	7.4 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 \$578,110 and 6.6 FTE in FY 2019-20 and \$468,142 and 6.6 FTE in FY 2020-21.

- *Personal services.* Beginning in FY 2019-20, DPS will require 1.0 FTE Fingerprint Examiner and 5.6 FTE Data Specialist to process the 6,515 fingerprint background applications.
- *Federal Bureau of Investigation pass-through.* The DPS passes \$11.25 of every application on to the federal government. With 6,515 applications, this equates to \$73,294 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 expenditures from the Judicial Stabilization Cash Fund in the Judicial Department by \$61,399 and 0.8 FTE in FY 2019-20 and \$56,753 and 0.8 FTE in FY 2020-21 and future years. The Judicial Department requires 0.8 FTE judicial officers to handle the increased volume of record sealing.

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 \$148,301 in FY 2019-20 and \$144,330 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 hearings 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.

Criminal record custodians. Any other local government custodians of criminal records may also see an increase in workload related to the sealing of conviction records.

Effective Date

The bill takes effect August 1, 2019.

State Appropriations

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

- \$443,847 to the DPS from the CBI Identification Unit Cash Fund and an allocation of 6.6 FTE, of which \$73,294 is passed through to the federal government as reappropriated funds; and
- \$47,361 from the Judicial Stabilization Cash Fund and an allocation of 0.8 FTE to the Judicial Department.

State and Local Government Contacts

Counties
Local Affairs
Sheriffs

District Attorneys
Municipalities

Judicial
Public Safety