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Fiscal Note

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Prime Sponsors: Rep. Mabrey; Soper Bill Status: House Judiciary
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Bill Topic: CRIMINAL RECORD SEALING & EXPUNGEMENT CHANGES

Summary of Fiscal Impact: [X] State Revenue [] State Transfer [X] Local Government
[X] State Expenditure [X] TABOR Refund [] Statutory Public Entity

The bill makes several changes to the process to seal or expunge a criminal record. Starting in FY 2024-25, the bill decreases state revenue and increases state and local expenditures.

Appropriation Summary: For FY 2024-25, the bill requires an appropriation of \$1.8 million to multiple state agencies.

Fiscal Note Status: The fiscal note reflects the introduced bill. This analysis is preliminary and will be updated following further review and any additional information received.

Table 1
State Fiscal Impacts Under HB 24-1133

Table with 4 columns: Category, Sub-category, Budget Year FY 2024-25, and Out Year FY 2025-26. Rows include Revenue (Cash Funds, Total Revenue), Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and Other Budget Impacts (TABOR Refund, General Fund Reserve).

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.

Sealing traffic cases. The bill allows sealing for cases when the only charges were class 1 or 2 misdemeanor traffic offenses or a class A or B traffic offense, and for persons who violated Section 18-18-406 (6)(a)(II)(B), C.R.S., concerning marijuana possession as it existed prior to October 1, 2013.

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 removes the requirement for a court to allow the district attorney the opportunity to inform victims that the record will be sealed 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.

Sealing municipal offenses. Under current law, a person can seal their criminal records with a municipal court after three years if the person has not been charged with a felony or misdemeanor, or after ten years if the person was convicted of a single offense that was not a felony, and that did not involve domestic violence or unlawful sexual behavior. The bill changes the timeline for sealing municipal offenses from three years to one year, and from ten years to three years, respectively. The bill also shortens the timeframe for the prosecution to write an objection to the sealing from 42 days to 28 days.

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.

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 14 days after the date of the motion, the court must order the record sealed regardless of other convictions on the defendant's record.

Automatic sealing of historical deferred judgments, acquittals, and diversion cases. By January 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) 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 process. [House Bill 21-1214](#) and [Senate Bill 22-099](#), established a process to automatically seal certain convictions, if four years have passed since the disposition of a civil infraction, seven years have passed since the disposition of a petty offense or misdemeanor, or ten years have passed since the disposition of a felony.

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 44,000 cases per year eligible for sealing under the bill due to allowing traffic cases to be sealed and for cases where defendants with no charges file to seal records because the district attorney did not file for sealing. Of that amount it is assumed that there are about:

- 39,000 cases for traffic infractions or misdemeanors that would be eligible for sealing under the bill;
- 3,300 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, 2024, based on the bill's effective date.

Automatic sealing. According to the Judicial Department, there have been about 566,000 cases filed through August 2022 denoting a deferred judgement, diversion agreement, or acquittal.

State Revenue

Starting in FY 2024-25, cash fund revenue to various cash funds in the Judicial Department will decrease by an estimated \$57,749 per year due to the bill 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. Revenue to Judicial Department cash funds is subject to the state's TABOR revenue limit.

State Expenditures

The bill increases state General Fund expenditures by \$2.2 million in FY 2024-25 and \$1.9 million in FY 2025-26 in the Judicial Department and the Department of Public Safety. Expenditures are shown in Table 2 and detailed below.

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

	FY 2024-25	FY 2025-26
Judicial Department		
Personal Services	\$149,123	\$149,123
Operating Expenses	\$1,995	\$1,995
Capital Outlay Costs	\$14,400	\$800
Contract Staff	\$232,609	\$232,609
Computer Programing	\$230,665	-
Centrally Appropriated Costs ¹	\$39,658	\$39,658
FTE – Personal Services	2.1 FTE	2.1 FTE
Judicial Subtotal	\$668,449	\$424,184
Department of Public Safety		
Personal Services	\$1,018,747	\$1,018,747
Operating Expenses	\$19,200	\$19,200
Capital Outlay Costs	\$100,050	-
Centrally Appropriated Costs ¹	\$393,338	\$393,338
FTE – Personal Services	15.0 FTE	15.0 FTE
DPS Subtotal	\$1,531,336	\$1,431,286
Total	\$2,199,784	\$1,855,469
Total FTE	17.1 FTE	17.1 FTE

¹ Centrally appropriated costs are not included in the bill's appropriation.

Judicial Department. The bill increases expenditures in the Judicial Department by about \$670,000 in FY 2024-25 and \$424,000 in FY 2025-26 to hire additional FTE and contract staff, and to make information technology upgrades, as described below.

- **Staffing.** The Judicial Department requires 2.1 FTE to process record sealing for an estimated 44,000 traffic offenses and non-conviction cases, as outlined in the Assumptions section above. Staffing assumes that most traffic cases will require five minutes per case to seal, equating to 1.6 FTE, and that traffic cases that also contain a dismissed charge will take approximately 20 minutes to seal and redact throughout the system, equating to 0.5 FTE. Staffing costs assume a July 1, 2024, start date.
- **Contract staffing.** The Judicial Department requires one-time contract staffing to serve copies of the automatic record sealing order to an estimated 566,000 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 total over two fiscal years beginning January 1, 2025.
- **IT modifications.** In FY 2024-25 only, the Judicial Department requires \$231,000 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.
- **Court workload decreases.** Courts will experience a minimal workload reduction under the bill resulting from the removal of the record sealing notification requirement for district attorneys and by allowing a defendant to file a single motion to seal multiple records within the same jurisdiction. No change in appropriations is required.

Department of Public Safety. The bill increases expenditures in the CBI by about \$1.5 million per year for staff to seal traffic records and non-conviction cases, as described below.

- **Staffing.** The CBI requires 15.0 FTE to process sealing requests for traffic offenses and non-conviction cases, based on the number of cases outlined in the Assumptions section above. Assuming it takes around 35 minutes to seal a record, this equates to 13.0 FTE record sealing staff and 2.0 FTE supervisory staff. First-year costs are prorated for a January 1, 2025, start date.

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.

- **State Patrol.** Colorado State Patrol workload will increase to seal additional traffic cases. It is unknown how many records will require sealing. It is assumed that if additional resources are necessary, these 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 December 2023 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 attorney's, municipal courts, and the Denver County Court will increase to seal cases.

Effective Date

The bill takes effect upon signature of the Governor, or upon becoming law without his signature.

State Appropriations

For FY 2024-25, the bill requires a General Fund appropriation of \$1,766,789 including:

- \$628,791 to the Judicial Department and 2.1 FTE; and
- \$1,137,997 to the Department of Public Safety, and 15.0 FTE.

Departmental Difference

The Department of Public Safety estimates it requires an additional \$3.0 million in FY 2024-25 and \$2.7 million in FY 2025-26. First, DPS assumes that 1.0 FTE can seal 1,167 records per year, which equates to about 1 hour and 45 minutes per case. Based on the assumed number of cases, this results in a need of 43.5 FTE which includes 37.7 FTE to seal and 5.8 FTE for supervisors. The fiscal note assumes that the amount of time to seal a record is 35 minutes.

In addition, the department assumes it requires \$100,000 for IT upgrades to receive an electronic data transfer from the Judicial Department. Based on the fiscal note for SB 22-099, which created a similar automatic sealing process, this analysis assumes IT upgrades are not necessary.

State and Local Government Contacts

Corrections
Judicial

District Attorneys
Public Safety

Human Services
Revenue

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](#).