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Final Fiscal Note

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Prime Sponsors: Rep. Weissman Bill Status: Signed into Law
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Bill Topic: RECORD SEALING COLLATERAL CONSEQUENCES REDUCTION

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

The bill makes several updates to the sealing of criminal records; creates an automatic process to seal eligible drug convictions; and retroactively allows adults and juveniles to petition for relief from collateral consequences. It will increase state and local revenue and expenditures on an ongoing basis.

Appropriation Summary: For FY 2021-22, the bill requires and includes an appropriation of \$340,420 to multiple state agencies.

Fiscal Note Status: This fiscal note reflects the enacted bill.

Table 1
State Fiscal Impacts Under HB 21-1214

Table with 4 columns: Category, Sub-category, Budget Year FY 2021-22, and Out Year FY 2022-23. Rows include Revenue (General Fund and Cash Funds, Total Revenue), Expenditures (General Fund, Centrally Appropriated, Total Expenditures, Total FTE), Transfers, and TABOR Refund (General Fund).

## Summary of Legislation

The bill makes several updates to the sealing of criminal records; creates an automatic process to seal eligible drug convictions; and retroactively allows adults and juveniles to petition for relief from collateral consequences. More detail can be found below.

**Sealing of arrest records.** The bill requires arrest records on or after January 1, 2022, to be automatically sealed if no charges have been filed within one year of the arrest. The Colorado Bureau of Investigation (CBI) must seal the record within 60 days after a year has passed. If the CBI receives charges after sealing, the record must immediately be unsealed.

The bill establishes the following deadlines for sealing prior arrest records with no convictions for the following years:

- *from 2019 to 2022:* within three years after the date of the arrest for qualifying felony offenses and within 18 months after the date of arrest for qualified misdemeanor, misdemeanor traffic, petty offense, municipal ordinance offenses;
- *from 2013 to 2018:* January 1, 2023;
- *from 2008 to 2012:* January 1, 2024;
- *from 2003 to 2007:* January 1, 2025;
- *from 1997 to 2002:* January 1, 2026; and
- *before 1997:* January 1, 2027.

An arrest record for felony offenses with a statute of limitations greater than three years is not eligible for sealing. The CBI must allow treatment providers for sex offenders and domestic abusers access to the sealed arrest record.

**Sealing with multiple conviction records.** The bill allows a defendant with multiple conviction records to petition to seal those records if the record or records are not eligible for sealing because of an intervening conviction. An individual must file a petition and give proper notice to the district attorney and pay a processing fee. After receiving the petition, the district attorney must determine whether to object to the petition and must advise the court of any victim objections. If the district attorney does not object and the crime is not a Victim's Rights Act crime, the court may decide on the petition without a hearing. Otherwise, the court must set the matter to hearing. To order the record sealed, a defendant must not have been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against them. Sealing cannot occur if the petitioner owes restitution, fines, court costs, late fees, or other fees, unless vacated by the court. Table 2 outlines the eligibility requirements in order to petition to seal multiple criminal records under the bill.

**Table 2**  
**Multiple Conviction Sealing**

<b>Eligible Criminal Offense</b>	<b>Eligibility After Sentence</b>	<b>Max. Number of Convictions<sup>1</sup></b>
Petty and Petty Drug Offense	2 years	5 convictions
Class 2 and 3 Misdemeanor	5 years	4 convictions
Drug Misdemeanor	5 years	4 convictions
Class 1 Misdemeanor	5 years	3 convictions
Level 4 Drug Felony	5 years	3 convictions
Class 4, 5, 6 Felony	10 years	3 convictions
Drug Felony	10 years	3 convictions

<sup>1</sup> Indicates maximum number of convictions in separate criminal cases.

In addition to those offenses outlined in Table 2, a misdemeanor offense that is listed as ineligible for sealing may be eligible for sealing if the district attorney consents to the sealing or the court finds clear and convincing evidence that: the petitioner’s need for sealing is significant and substantial; the petitioner is no longer a threat to public safety; and public disclosure of the record is no longer necessary. Only one misdemeanor crime as defined in the Victim’s Rights Act may be eligible for sealing under this section.

**Sealing for pardoned offenses.** After a person receives a full and unconditional pardon, the individual may file a motion to seal their record for the offense receiving the pardon. The individual does not need to pay a processing fee, but must provide the district attorney notice. The district attorney must decide whether to object to the motion and, if there is an objection, the court must set a hearing to decide if the record should be sealed.

**State appointed attorney for sealing records.** The bill allows the Office of the State Public Defender and the Office of the Alternative Defense Council to seek, accept, and expend gifts, grants, or donations from private or public sources to represent indigent clients in record sealing cases.

**Sealing of drug convictions.** The bill requires the State Court Administrator to compile a list of individuals with drug convictions who are eligible for sealing under Colorado’s sealing statute if seven years have passed since the disposition of a petty offense or misdemeanor case, or ten years has passed for a felony. The administrator shall compile an initial list by February 1, 2024.

After the initial list is compiled, the State Court Administrator must forward the list to the Colorado Bureau of Investigation (CBI) within the Department of Public Safety (DPS). CBI must compare the list with a criminal history report and complete a comparison based fingerprint review. CBI must remove any convictions from the initial list in which sufficient identification validation cannot be made and if the defendant has an intervening conviction during the seven or ten year waiting period. The CBI must forward the amended list to each district attorney’s office.

When the amended list is received, district attorneys must remove convictions where a condition of plea was not to seal a defendant’s conviction record and convictions in which the defendant has a pending charge. District attorneys must then forward the list to the State Court Administrator who must compile each district attorney’s list into one final list sorted by judicial district.

Upon completion of the final list, the district attorney must send the final list to the chief judge and their courts who must enter the sealing orders. The district court must send a copy of the sealing order to the CBI, local law enforcement, the district attorney's office, and the defendant if the contact information is necessary. Records must be sealed by July 1, 2024. After July 1, 2024, the state court administrator must compile a new list on the first Monday of each month with the CBI and district attorneys completing their review within 35 days of receiving a list, and sealing occurring within 14 days of receiving the amended list.

Finally, the State Court Administrator must develop a website that allows defendants to confidentially determine whether their conviction has been sealed, and information on how to receive a copy of the sealing order.

**Collateral relief.** Finally, the bill allows adults and juveniles to retroactively file motions for relief from collateral consequences. In addition, the bill allows the General Assembly to appropriate funds from the Marijuana Tax Cash Fund to be used for expenses related to the reduction of collateral consequences experienced by people previously sentenced for drug offenses.

## Assumptions

**Petitions to seal multiple convictions.** Between January 1, 2010, and December 31, 2019, there were an average of 15,897 individuals per year with more than one criminal conviction that may be eligible for sealing under the bill. The fiscal note assumes that 5 percent of these individuals, or 795 individuals, will petition to seal their record per year and that a Judicial Officer can manage 1,098 civil cases per year.

## State Revenue

The bill will increase state General Fund and cash fund revenue to the Judicial Department by \$100,170 in FY 2021-22 and \$133,560 in FY 2022-23 from an increase in record sealing fees.

**Record sealing fees.** Table 3 outlines the total court fees to seal criminal records, assuming a 25 percent indigence rate. FY 2021-22 revenue assumes and October 1, 2021, start date. Court fees are subject to the state's TABOR limit.

**Table 3**  
**Revenue Under HB 21-1214**

<b>Fiscal Year</b>	<b>Type of Fee</b>	<b>Fee</b>	<b>Number<sup>1</sup></b>	<b>Total</b>
<b>FY 2021-22</b>	Multiple Record Sealing	\$224	447	\$100,170
<b>FY 2022-23</b>	Multiple Record Sealing	\$224	596	\$133,560

<sup>1</sup> Fee numbers assume a 25 percent indigence rate.

**Gifts, grants, and donations.** In addition to court revenue, the bill may also increase revenue to the Office of the State Public Defender and the Office of the Alternative Defense Counsel from gifts, grants, and donations. No source of gifts, grants, and donations have been identified at this time. Gifts, grants, and donations are not subject to the state’s TABOR limit.

**State Expenditures**

This bill will increase state expenditures by \$388,119 and 2.5 FTE in FY 2021-22 and by \$661,938 and 3.5 FTE in FY 2022-23 in the Judicial Department and the DPS. In addition, starting in FY 2023-24, the bill will increase expenditures in the Judicial Department and DPS to compile and review a list of drug convictions eligible for sealing. Finally, workload may increase for the independent judicial agencies that represent indigent persons. Expenditures for FY 2021-22 and FY 2022-23 are outlined in Table 4 and additional details can be found below.

**Table 4  
Expenditures Under HB 21-1214**

<b>Cost Components</b>	<b>FY 2021-22</b>	<b>FY 2022-23</b>
<b>Judicial Department</b>		
Personal Services	\$184,470	\$279,749
Operating Expenses	\$4,716	\$2,664
Capital Outlay Costs	\$111,419	\$2,400
Computer Programming	-	\$274,387
Centrally Appropriated Costs <sup>1</sup>	\$37,625	\$55,268
FTE – Personal Services	2.0 FTE	2.8 FTE
<b>Judicial Subtotal</b>	<b>\$338,230</b>	<b>\$617,720</b>
<b>Department of Public Safety</b>		
Personal Services	\$19,595	\$28,604
Operating Expenses	\$675	\$945
Capital Outlay Costs	\$6,200	-
Mailings	\$346	\$461
Computer Programming	\$13,000	-
Centrally Appropriated Costs <sup>1</sup>	\$10,073	\$14,208
FTE – Personal Services	0.5 FTE	0.7 FTE
<b>DPS Subtotal</b>	<b>\$49,889</b>	<b>\$44,218</b>
<b>Total</b>	<b>\$388,119</b>	<b>\$661,938</b>
<b>Total FTE</b>	<b>2.5 FTE</b>	<b>3.5 FTE</b>

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

**Judicial Department.** The bill increases state expenditures in the Judicial Department in two main areas, trial courts and information technology for the Office of the State Court Administrator. Costs are described in more detail below.

- *Trial courts.* Based on amount of additional hearing time outlined in the Assumptions section, this bill increases Judicial Department staffing by a total of 2.8 FTE. The Judicial Department will require an additional 0.7 FTE Judicial Officer, and 2.1 FTE of support staff, including a court clerk, law clerk, and court reporter. Costs in FY 2021-22 are prorated for the General Fund pay date shift and for an October 1, 2021, start date. Based on Judicial Department common policies, standard operating and capital outlay costs are included for judges and support staff. Judges costs consist of funding for law library materials, travel expenses, judge robe expenditures, and computer hardware and software, as well as furnishings for the judge chambers, law library, jury room, and conference room.
- *Computer programming.* To compile a list of eligible drug offenses for sealing, the Judicial Department requires updates to IT systems to compile a list of eligible offenses to send the list to required parties, to issue orders to seal cases for courts that opt into allowing the State Court Administrator to issue the orders, and to enter sealing codes automatically. The department must also create a website to allow a defendant to verify that their record was sealed and how to receive a copy. The above work is estimated to take 2,531 hours at an average cost of about \$108 an hour in FY 2022-23, and 3,037 hours in FY 2023-24 at a cost of \$114 per hour.
- *Sealing of drug records.* Workload will increase in the State Court Administrator to process the list of court records to relevant agencies. Because the fiscal note assumes this will be an automated process, as described above, the increase in workload is expected to be minimal.

**Department of Public Safety.** The bill will increase expenditures in the Colorado Bureau of Investigation in DPS as described below.

- *Sealing of criminal offenses through court petitions.* Based on the number of record sealing petitions outlined in the Assumptions section, the DPS will require 0.7 FTE to seal criminal records related to the expanded number of eligible offenses that may petition and to multiple convictions. This assumes that 1 FTE can process 1,167 sealing requests a year. FTE costs include personal services, operating, and capital outlay costs. Costs in FY 2021-22 are prorated for an October 1, 2021, and the General Fund pay date shift. Finally, the fiscal note assumes that individuals with a court order for record sealing will not have to pay a fee to DPS; therefore, costs will be covered by the General Fund.
- *Mailings.* Starting in FY 2021-22, expenditures in the DPS will increase for printing and postage to notify individuals that their records have been sealed. Costs assume that each notification costs \$0.58.
- *Computer programming to seal arrest records.* In FY 2021-22 only, expenditures in the DPS will increase to make modifications to the Colorado Crime Information Center System to automatically seal arrest records when no charges are brought. The modifications are estimated to cost \$13,000.

- *Unsealing records.* Workload to the DPS will increase to unseal records if charges are brought after records are sealed. The fiscal note assumes that these instances will be minimal and that this work can be accomplished within existing appropriations.
- *Sealing drug records.* Starting in FY 2023-24, expenditures in the DPS will increase to review a list prepared by the State Court Administrator, to conduct a fingerprint review, and to revise the list as necessary. The exact increase of expenditures will depend on the number of cases identified by the State Court Administrator. For informational purposes, assuming each entry will take 20 minutes on average to review, the DPS will require 1.0 FTE per about 6,000 cases. These costs will be addressed through the annual budget process.

**Offices representing indigent offenders.** To the extent the Office of the State Public Defender and the Office of the Alternative Defense Council receive gifts, grants, and donations to assist indigent offenders in sealing their record, expenditures will increase. Because the bill does not change the duties of either office in representing indigent offenders in record sealing proceedings, the fiscal note assumes that the offices will assist in the sealing of records only if funds are available.

**Marijuana Tax Cash Fund.** To the extent the General Assembly chooses to use Marijuana Tax Cash Fund money to fund programs that reduce collateral consequences, such as access to employment, housing, and other services, expenditures to those programs will increase.

**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 and supplemental employee retirement payments, as well as leased space for DPS employees and are estimated to be \$47,699 in FY 2021-22 and \$69,476 in FY 2022-23.

**TABOR refunds.** The bill is expected to increase the amount of state revenue required to be refunded to taxpayers by the amounts shown in the State Revenue section above. TABOR refunds are paid from the General Fund. This estimate is based on the June 2021 LCS revenue forecast, which incorporates the revenue impacts of bills passed during the 2021 session. A forecast of state revenue subject to TABOR is not available beyond FY 2022-23.

**Federal ARPA funds.** This bill increases state revenue, which may impact the state's flexibility in spending federal American Rescue Plan Act (ARPA) funds. For more information, see the LCS memo, titled "Legislative Changes and Flexibility in Use of American Rescue Plan Funds," available online at: <https://leg.colorado.gov/node/2211881>.

## Local Government

The bill will increase expenditures in local government agencies including district attorney offices and the Denver County Court, as described below.

**District attorneys.** Expenditures in district attorney's offices will increase to review and respond to petitions; contact victims, as necessary; and attend hearings.

Starting in FY 2023-24, expenditures will increase for each office to review lists of potential drug records to be sealed. For informational purposes, each drug record identified will cost district attorney's offices about \$15 per record for a support staff to review. District attorney offices are funded by counties, with each county in a judicial district contributing based on its population.

**Denver County Court.** Similar to the Judicial Department, revenue and expenditures in the Denver County Court will increase to hear additional petitions and receive processing fees. The Denver County Court will update its information technology system at a cost of up to \$150,000 to interface with the Judicial Department's system for collaborative development of a list of eligible drug records and to develop a website for offenders to access information about sealed records. The Denver County Court is administered and funded by the City and County of Denver.

## Effective Date

The bill was signed into law by the Governor on July 6, 2021, and took effect on September 7, 2021.

## State Appropriations

For FY 2021-22, the bill requires and includes the following General Fund appropriations:

- \$300,605 and 2.0 FTE to the Judicial Department; and
- \$39,815 and 0.5 FTE to the Department of Public Safety.

## State and Local Government Contacts

Corrections  
Information Technology  
Public Safety

District Attorneys  
Judicial  
Revenue

Human Services  
Municipalities