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Fiscal Note

Drafting Number: LLS 22-0502
Prime Sponsors: Sen. Hisey; Rodriguez
Rep. Tipper

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Bill Status: Senate Judiciary
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Bill Topic: **SEALING CRIMINAL RECORDS**

Summary of Fiscal Impact:

<input checked="" type="checkbox"/> State Revenue	<input checked="" 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

The bill requires all records that are eligible to be sealed under current law to be automatically sealed by July 1, 2024. The bill also prohibits the use of information received through a sealed record in consumer reports, or to deny someone employment or housing. The bill increases state and local expenditures and decreases state revenue on an ongoing basis.

Appropriation Summary: For FY 2022-23, the bill requires an appropriation of \$842,145 to various state agencies; see State Appropriations section.

Fiscal Note Status: The fiscal note reflects the introduced bill.

Table 1
State Fiscal Impacts Under SB 22-099

		Budget Year FY 2022-23	Out Year FY 2023-24	Out Year FY 2024-25
Revenue	Cash Funds	-	(\$227,290)	(\$227,290)
	Total Revenue	-	(\$227,290)	(\$227,290)
Expenditures	General Fund	\$842,145	\$7,716,170	\$1,069,578
	Centrally Appropriated	\$54,083	\$369,532	\$201,984
	Total Expenditures	\$896,228	\$8,085,702	\$1,271,562
	Total FTE	0.8 FTE	13.9 FTE	11.9 FTE
Transfers		-	-	-
Other Budget Impacts	TABOR Refund	-	(\$227,290)	(\$227,290)
	General Fund Reserve	\$126,322	\$1,157,425	\$160,437

Summary of Legislation

The bill automatically seals records that are eligible to be sealed under current law, requires consumer reporting agencies to disclose to customers when a report contains information from criminal justice records, and makes it an unfair employment practice to discharge or refuse to promote, or to refuse housing to a person due to contents of a sealed criminal record.

Automatic sealing of criminal records. House Bill 21-1214 established a process to automatically seal certain criminal records related to drug offenses. The bill expands the eligible offenses for automatic record sealing to certain offenses that are currently eligible for sealing by petition, including:

- civil infractions with four years since the final disposition;
- petty offenses or misdemeanors with seven years since the final disposition; and
- felonies with ten years since the final disposition.

If the defendant's records are not automatically sealed, the defendant may still make a motion to seal at no charge.

The bill requires the State Court Administrator to compile an initial list of eligible cases by February 1, 2024, and to send that list to the Colorado Bureau of Investigation (CBI). After receiving the list, CBI must compare the list with a criminal history report, complete a comprehensive fingerprint review, and remove any convictions where identification validation cannot be made or if the defendant has an intervening conviction during the required waiting period. This must be completed in 35 days. After removing the required names, the list is forwarded to district attorneys who have 45 days to remove convictions from the list where the condition of a plea was that the defendant agreed not to have their conviction record sealed and where the defendant has a pending criminal charge. After the district attorneys remove the required convictions, the district attorney must send the final list back to the State Court Administrator who then will send the list to each chief judge of each judicial district to enter sealing orders. The records on the initial list must be sealed by July 1, 2024, and a new list must be updated quarterly.

Other process updates. The bill makes several updates to the current non-automatic process for sealing records. First, the bill requires the court, instead of the defendant, to provide custodians of the criminal record with a copy of a sealing order. Second, the bill allows defendants to seal their record even if they have unpaid restitution, fines, court costs, late fees or other fees ordered by the court.

Sealing municipal violations. The bill allows a defendant to file a motion in which any conviction records for a municipal violation are located after the date of the final disposition, instead having to wait three years.

Reports. The bill requires two reports related to automatic sealing. First, the bill requires the Judicial Department to report on the number of conviction records received and were considered for automatic sealing by February 1, 2024. In addition, the bill requires the Colorado Bureau of Investigation (CBI) to report on the number of arrest records considered for sealing and the number of records that were sealed.

Unfair employment and housing practice. The bill makes it an unfair employment practice and an unfair housing practice to deny someone employment or housing because of information received from a sealed criminal record.

Sealed criminal record information in reports. The bill requires a consumer reporting agency to disclose to each consumer whose report contains information from a sealed criminal record and prohibits reports from using records of charges or indictments pending trial, sealed records, expunged records, or records that did not result in conviction. Finally, the bill removes the exception of including prohibited information in consumer reports for employment of an individual who is expected to make at least \$75,000.

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 established a process to automatically seal certain drug convictions if seven years have passed since the disposition of a petty offense or misdemeanor, or ten years have passed since the disposition of a felony. The process for automatic sealing mirrors the process outlined in the bill.

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.

Data and Assumptions

Historical cases eligible for sealing. According to the Judicial Department’s case management system, there are about 1.5 million cases since 2000 that could be subject to automatic sealing under the bill. The fiscal note assumes that of these cases, 25 percent of them have sealed their records under current sealing statutes. Of the remaining 1.125 million, it is assumed that 50 percent of cases, 562,500 cases, will be immediately eligible for automatic sealing on the initial list required by the bill.

Yearly cases eligible for sealing. According to the Judicial Department’s case management system, from 2017 to 2021, there were 273,958 unique cases flagged as being eligible for sealing, or 54,792 annually. The fiscal note therefore assumes that 54,792 cases annually will be sealed starting in FY 2024-25.

State Revenue

The bill will decrease state cash fund revenue to the Judicial Stabilization Cash Fund in the Judicial Department and the CBI Identification Unit Cash Fund in the Department of Public Safety (DPS) by an estimated \$227,290 per year starting in FY 2023-24. Estimated revenue decreases are shown in Table 2 and described below. Revenue collected from the sealing of records is subject to the state’s TABOR limit.

Table 2
Annual Revenue Impact Under SB 22-099

Type of Fee	Proposed Fee	Number Affected	Total Fee Impact
Civil Filing Fee	\$65	(2,674)	(\$173,810)
CBI Sealing Fee	\$20	(2,674)	(\$53,480)
		Annual Total	(\$227,290)

Civil filing fee. The fiscal note assumes that under the bill, there will be 3,415 fewer cases that file with the court to have records sealed than under current law. Assuming a 25 percent indigency rate, the fiscal note assumes the Judicial Department will receive 2,674 fewer petitions that pay the \$65 processing fee.

CBI sealing fee. The CBI currently charges a \$20 fee to seal cases. Because the bill will automatically seal the cases without a fee, fee revenue to CBI will decrease. Assuming 2,674 individuals pay the fee, revenue will decrease by \$53,480.

Other court fines and fees. Because the bill removes the requirement that the defendant repay any fees or fines issued by the court before having their record sealed, revenue from those fees and fines may decrease. This revenue impact has not been estimated.

State Expenditures

The bill increases state expenditures in the Judicial Department and the DPS by \$0.9 million in FY 2022-23, \$8.1 million in FY 2023-24, and \$1.2 million in FY 2024-25, paid from the General Fund. Expenditures are shown in Table 2 and detailed below. Any staffing costs identified below include costs for personal services, operating expenses, and capital outlay as shown in Table 3, with first year costs prorated for the General Fund pay date shift.

**Table 3
Expenditures Under SB 22-099**

Cost Components	FY 2022-23	FY 2023-24	FY 2024-25
Judicial Department			
Personal Services	\$57,872	\$978,812	\$210,426
Operating Expenses	\$760	\$15,485	\$2,850
Capital Outlay Costs	\$6,520	\$244,279	\$1,200
Probation Contract Staff	-	\$90,000	-
IT Modifications	\$763,993	\$1,373,844	\$340,000
Centrally Appropriated Costs ¹	\$54,083	\$369,532	\$76,264
FTE – Personal Services	0.8 FTE	13.9 FTE	3.0 FTE
Judicial Subtotal	\$883,228	\$3,071,952	\$630,740
Department of Public Safety			
Personal Services	-	-	\$408,228
Operating Expenses	-	-	\$13,095
Capital Outlay Costs	-	-	\$62,000
IT Modifications	\$13,000	-	-
Postage	-	\$326,250	\$31,779
Contract Staff	-	\$4,687,500	-
Centrally Appropriated Costs ¹	-	-	\$125,720
FTE – Personal Services	-	-	8.9 FTE
DPS Subtotal	\$13,000	\$5,013,750	\$640,822
Total	\$896,228	\$8,085,702	\$1,271,562
Total FTE	0.8 FTE	13.9 FTE	11.9 FTE

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

Judicial Department. The bill increases expenditures in the Judicial Department to automatically seal eligible records, including both the one-time sealing of historical records and annual sealing of newly eligible records. The bill impacts a variety of divisions within the department, as described below.

- **Trial courts.** The bill increases expenditures in the trial courts in two ways.

First, under the current sealing process, district attorneys may object to a motion for sealing for anything higher than a class 3 misdemeanor. The fiscal note assumes that district attorneys may continue filing motions related to sealing, which will require the court to hold a hearing. Assuming that the district attorneys will object to 1 percent of historical cases, and a hearing to that objection will take 15 minutes, the trial courts will require 0.7 FTE magistrate, and 2.1 FTE of support staff, including a court clerk, law clerk, and court reporter in FY 2023-24 only. In future years, the fiscal note assumes that hearing times require no additional appropriation. Magistrate costs include 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.

Second, the bill requires the courts, rather than the defendant, to provide a sealing order to each custodian. This will require additional clerk staff to enter service information of each case and will increase postage costs. Assuming it takes five minutes per case to enter all service information and to provide notice to custodians, the courts will need 11.3 FTE in FY 2023-24, reduced to 2.0 FTE in FY 2024-25 and ongoing.

- **State Court Administrator's Office.** Starting in FY 2022-23, the State Court Administrator's Office will require 1.0 FTE to assist in the development of required IT modifications, provide and receive quarterly lists through the automatic sealing process, to amend lists as necessary, to provide amended and annotated lists to the chief judges, to research specific cases as needed, provide technical assistance to both internal and external stakeholders, and to prepare an annual report.
- **Probation.** In FY 2023-24 only, the Probation Division will require temporary contract staff to seal historical records that are stored digitally. The fiscal note assumes that out of the assumed historical cases identified, 225,000 will have records with the Probation Division. Assuming that it takes 1 minute per case to mark any digital records sealed, the division will require 3,750 hours of contract work at an estimated rate of \$24 per hour. This amount assumes the division will have two months to seal records by July 1, 2024.
- **Information technology.** Starting in FY 2022-23 the Judicial Department will modify its IT systems to allow for the department to send out an expanded list of eligible cases for sealing, to develop various data transfers between different databases and parties, to process and send sealing orders to parties that opt into the system, to enter proper sealing codes automatically, and to disaggregate race and ethnicity data for the required report. These modifications are estimated at a cost of \$763,993 in FY 2022-23, \$1.4 million in FY 2023-24, and \$340,000 in FY 2024-25 and ongoing for licensing costs.

Department of Public Safety. Starting in FY 2022-23, expenditures in the DPS will increase to compare a list of eligible records for sealing and to expunge records, as described below.

- **Initial list.** In FY 2023-24 only, expenditures in the DPS will increase by \$5.0 million. This includes \$4.7 million to hire contract staff to compare the initial list to CBI's records and to conduct any necessary research on intervening convictions. As discussed in the Assumptions section, this assumes that each of the 562,500 records takes on average 20 minutes at an estimated contract rate of \$25 per hour. In addition, postage cost within the DPS will increase to provide confirmation that a defendant's record has been sealed at \$0.58 per document.
- **Ongoing list checks.** Starting in FY 2024-25, the DPS will require 9.7 FTE to review the quarterly lists and to conduct necessary research to ensure there has not been an intervening conviction. Postage costs will also increase to provide confirmation to the defendant that the record has been sealed.
- **Computer programing.** In FY 2022-23 only, the department requires \$13,000 to update its crime record system to seal cases that are eligible for sealing.

Employment complaints. Workload will increase in the Colorado Department of Regulatory Agencies to investigate, review, and resolve complaints from individuals who believe that a sealed record was used in a prohibited manner relating to their employment or potential employment. Preliminarily, it is assumed that this work can be accomplished within existing appropriations.

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, 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. This estimate assumes the December 2021 LCS revenue forecast. A forecast of state revenue subject to TABOR is not available beyond FY 2023-24. 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 beginning in FY 2022-23. Based on this fiscal note, the bill is expected to increase the amount of General Fund held in reserve as shown in Table 1, which will decrease the amount of General Fund available for other purposes.

Local Government

Starting in FY 2023-24, expenditures and workload within local district attorney offices will increase to review the initial list eligible records, to object to any record, to attend any hearings due to the objection, and to seal any records identified in the list. The exact increase will depend on district

attorney office and the amount of records they must review. For information purposes, it is estimated that it would cost up to \$24 per case to review the list, conduct any research, and to track any objection. Some cases may cost less if there is no objection or if less research is necessary. Local district attorney offices are funded by the counties located within each judicial district.

Effective Date

The bill takes effect 90 days following adjournment of the General Assembly sine die, assuming no referendum petition is filed.

State Appropriations

For FY 2022-23, the bill requires the following appropriations from the General Fund:

- \$829,145 to the Judicial Department and 0.8 FTE; and
- \$13,000 to the Department of Public Safety.

Departmental Difference

The Department of Public Safety estimates that the bill will cost \$7.5 million in FY 2022-23 and \$10.8 million ongoing starting in FY 2023-24. This is based on the assumption that 1.0 FTE can review 1,167 records in one year and that the DPS will seal 112,500 records per year. Due to the bill's deadlines, the fiscal note includes \$4.7 million in contractor costs in FY 2023-24 only for review of historical cases assuming that each review will take an average of 20 minutes and must be completed by the close of FY 2023-24.

State and Local Government Contacts

District Attorneys
Law

Information Technology
Public Safety

Judicial
Regulatory Agencies