



**Colorado
Legislative
Council
Staff**

HB17-1266

FISCAL NOTE

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

Drafting Number: LLS 17-1020
Prime Sponsor(s): Rep. Hooton; Melton

Date: March 27, 2017
Bill Status: House Judiciary
Fiscal Analyst: Amanda Hayden (303-866-4918)

BILL TOPIC: SEAL MISDEMEANOR MARIJUANA CONVICTION RECORDS

Fiscal Impact Summary	FY 2017-2018	FY 2018-2019
State Revenue	\$122,119	\$146,358
Cash Funds	122,119	146,358
State Expenditures	Workload increase.	
TABOR Impact	\$122,119	\$146,358
Appropriation Required: None.		
Future Year Impacts: Ongoing increase in state revenue and workload.		

Summary of Legislation

This bill allows defendants convicted of a misdemeanor offense for the use or possession of marijuana to petition to seal their criminal records if their offense would not have been a crime if committed on or after December 10, 2012. Defendants must pay the court's filing fee and an additional \$65 and must establish by a preponderance of the evidence that the offense would not have been a crime on or after December 10, 2012. When the court moves to seal a record under the bill, the defendant must provide to the Colorado Bureau of Investigation (CBI) and each custodian of the conviction records a copy of the court order. The defendant must also pay CBI's record sealing fee. After this takes place, the defendant may request and the court may seal the civil case in which the conviction records were sealed.

Background

On December 10, 2012, the possession and home cultivation of marijuana by residents over age 21 became legal in Colorado as a result of the passage of Amendment 64, a ballot measure approved by voters in the 2012 election.

Between January 1, 2010, and December 10, 2012, there were 4,836 cases with at least one conviction for a marijuana-related misdemeanor or petty offense. Of these, 95.0 percent of the cases were petty offenses, 0.1 percent were class 3 misdemeanors, 2.0 percent were class 2 misdemeanors, and 3.0 percent were class 1 misdemeanors.

Under current law, a defendant convicted on or after July 1, 2011, of an offense involving controlled substances can petition the court to have his or her conviction records sealed. If the offense was a petty offense or a class 2 or 3 misdemeanor, the individual must wait three years after the later of the date of the final disposition of the case or the release of the individual from any supervision sentenced by the court. For offenses committed between July 1, 2008, and July 1, 2011, individuals must wait 10 years from the date of the final disposition of their cases or the release from supervision, whichever is later, before filing a petition to seal criminal records. For offenses committed before July 1, 2008, that are otherwise eligible, individuals must ensure the district attorney does not object and must pay the district attorney all reasonable attorneys fees and costs relating to the petition to seal records. The individual must also pay the civil filing fee plus an additional \$200.

State Revenue

This bill will increase state cash fund revenue from fees in the Department of Public Safety by \$5,652 in FY 2017-18 and by \$6,771 in FY 2018-19 and in the Judicial Department by \$116,467 in FY 2017-18 and by \$139,587 in FY 2018-19.

Assumptions. The fiscal note assumes that individuals with convictions entered within the last ten years will be those most motivated to seal their criminal records. Based on the data presented above, there are an estimated 9,672 cases with marijuana petty offense or misdemeanor convictions entered between January 1, 2007, and December 10, 2012. The fiscal note assumes that in approximately 5 percent of these cases per year, or 483 cases, the individual will move to seal his or her criminal records with the Judicial Department and in half of these cases, with CBI as well. This estimate includes individuals who are not yet eligible under current law to seal their records. The fiscal note assumes that revenue collected in FY 2017-18 will reflect approximately 10 months of record sealing petitions.

Fee impact on individuals. Colorado law requires legislative service agency review of measures which create or increase any fee collected by a state agency. CBI charges a fee of \$27.98 to seal criminal records. For the most part, CBI holds arrest records, though they do have some conviction records on file. The Judicial Department charges a civil filing fee of \$224 to seal most criminal records. The bill requires petitioners to pay this \$224 fee plus an additional \$65. The revenue amounts shown below are estimates only, actual fee calculations will be set administratively by DPS and the Judicial Department based on cash fund balance, estimated program costs, and the estimated number of petitioners who pay the fee. The table below identifies the estimated fee impact of this bill.

Table 1. Estimated Fee Impact on Individuals under HB17-1266					
Type of Fee	Current Fee	Proposed Fee	Fee Change	Number Affected	Total Fee Impact
Record sealing fee - CBI	\$27.98	\$27.98	\$0	202	\$5,652
Record sealing fee - Judicial	\$224	\$289	\$65	403	\$116,467
FY 2017-18 TOTAL					\$122,119
Record sealing fee - CBI	\$27.98	\$27.98	\$0	242	\$6,771
Record sealing fee - Judicial	\$224	\$289	\$65	483	\$139,587
FY 2018-19 TOTAL					\$146,358

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 for DPS and the Judicial Department to seal additional criminal conviction records. This workload can be accomplished within existing workloads and requires no adjustment in appropriations for either agency. Any other agencies that have criminal conviction records may also see an increase in workload to seal records. To the extent that this occurs at all, the fiscal note assumes it will be minimal.

Local Government Impact

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.

Any other local government custodians of criminal records may also see an increase in workload related to the sealing of conviction records. Any increase is assumed to be minimal.

Effective Date

The bill takes effect August 9, 2017, if the General Assembly adjourns on May 10, 2017, as scheduled, and no referendum petition is filed.

State and Local Government Contacts

Counties
Judicial
Sheriffs

District Attorneys
Municipalities

Information Technology
Public Safety