

# Initiative 200: Expungement of Eligible Criminal Records

1 Initiative 200 proposes amending the Colorado statutes to:

- 2 • require that the state court system automatically expunge and destroy eligible adult  
3 and juvenile records;
- 4 • impose an expungement fee on a defendant that varies in cost based on the  
5 seriousness of the offense, with the revenue distributed to a variety of new and  
6 existing social programs; and
- 7 • require participation in a life skills development program as an alternative to the  
8 expungement fee for individuals who are unable to pay.

## 9 What Your Vote Means

**YES** A “yes” vote on Initiative 200 means that eligible adult and juvenile records will be expunged under a new process involving a fee or participation in a life skills development program, with the fee revenue distributed to a number of community-based programs and services.

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**NO** A “no” vote on Initiative 200 means that current expungement and sealing processes for adult and juvenile records will remain unchanged.

1 **Summary and Analysis for Initiative 200**

2 **What is expungement of criminal records?**

3 Expungement is the process by which a criminal or juvenile delinquency record is  
4 destroyed or sealed. In Colorado, the term expungement only applies to juvenile  
5 delinquency records, while adult criminal records are sealed. Current law does not  
6 define expungement or sealing as the erasure or deletion of criminal records.  
7 Instead, when a record is expunged or sealed, it is removed from public view. There  
8 are some circumstances in which a record may be accessed, such as for subsequent  
9 criminal investigations, future juvenile or adult sentencing hearings, and certain  
10 professional licenses and certification.

11 **What does Initiative 200 do?**

12 This measure defines expungement as the complete deletion of criminal and  
13 delinquency records and requires that qualifying adult and juvenile defendants  
14 participate in and pay for a mandatory and automatic expungement process.

15 The state court system, in cooperation with the Colorado Department of Public  
16 Safety, is required to initiate and execute the automatic expungement process after a  
17 specified amount of time. The measure calculates how long a person must wait  
18 before a record is eligible to be expunged using a formula that takes into account the  
19 criminal offense and the number of charges.

20 Defendants are assessed an expungement fee based on the seriousness of the  
21 crime and other factors. Interest accrues at a rate of 5 percent per year if an  
22 individual does not pay the fee in full.

23 The expungement fee may be waived if the court determines a defendant does not  
24 have sufficient income to pay it, in which case the individual must enter into a life  
25 skills development program for a time period based on how long it would take to pay  
26 off the associated expungement fee. The Colorado Department of Public Safety is  
27 required to manage the life skills development program, encompassing community  
28 service, rehabilitation, and educational components.

29 This process for the expungement of records also applies retroactively, with no  
30 expungement fee required. The measure does not outline how far back in time the  
31 retroactive period would cover.

32 The measure specifies and creates programs, program funds, and oversight boards  
33 that are funded by the expungement fee revenue.

34 **How is Initiative 200 different from current law?**

35 Initiative 200 makes several substantive changes to current law regarding  
36 expungement of juvenile records and sealing of adult criminal records. The measure  
37 does not repeal current law, and it is unknown how the two will interact or conform to  
38 each other. Table 1 outlines the differences between the current law and  
39 Initiative 200.

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**Table 1**  
**Comparison of Current Law and Initiative 200**

<b>Current Law</b>	<b>Initiative 200 Provisions</b>
<b>Accessibility of Records</b>	
Sealed or expunged records are accessible by certain criminal justice agencies for public safety and licensure purposes.	Expunged records are destroyed and are not accessible to any agency.
<b>Expungement Process</b>	
Defendants initiate the expungement or sealing of a record by petitioning the court.	The court initiates the expungement process after a mandated waiting period.
The court reviews records for expungement and sealing, taking into consideration age, type of crime, treatment, and rehabilitation.	The automatic process does not allow for judicial review.
<b>Fees</b>	
Juveniles do not pay a fee to expunge records. Adults are assessed either a \$65 or \$224 filing fee, depending on if a case was dismissed, deferred, or acquitted.	Adults and juveniles are required to pay an expungement fee, ranging from \$350 to \$10,000, depending on the offense. An interest rate of 5 percent will apply to late payments.
There is no alternative to paying a fee to seal adult records (a fee does not apply to juveniles).	Indigent juvenile and adult defendants can complete a life skills development program in lieu of paying the expungement fee.
Revenue from filing fees are allocated to court services.	Expungement fee revenue is dedicated to various existing and newly created programs and services.
<b>Eligibility</b>	
Certain crimes are not eligible for sealing, including ones related to domestic violence, unlawful sexual behavior, Driving Under the Influence (DUI), and certain other traffic offenses.	More crimes are eligible for expungement, including certain felonies, traffic offenses including DUIs, and others related to domestic violence and unlawful sexual behavior.
Most juvenile records are eligible for expungement with some exceptions and the process is separate from adults.	Adult and juveniles are subject to the same expungement eligibility criteria and process, narrowing the scope of crimes for juveniles.
<b>Victim Involvement</b>	
Victims are notified when a defendant initiates expungement or sealing as afforded by the Victim Rights Act.	Victim notification rights of expungement are not acknowledged.

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1 **Where is revenue from the Initiative 200 expungement fee allocated?**

2 Revenue collected from the expungement fee funds a variety of programs and services  
 3 outlined in Table 2.<sup>1</sup>

4 **Table 2**  
 5 **Annual Allocation of Fee Revenue by Program**

Funds	First Year Allocation	Subsequent Years Allocation
Cover Costs for Expunging Records	10%	5%
Life Skills Development Program*	10%	10%
Housing Development Grant and other Housing Assistance	10%	10%
General Fund	10%	3%
Occupational Education Scholarship Fund*	8%	8%
Substance Use Disorder Services	5%	5%
Geriatrics Healthcare Professional Scholarship Fund*	5%	5%
Auraria Higher Education Center	5%	5%
Veteran Peer Support Fund*	5%	5%
Peace Officer Mental Health Program	5%	10%
Agricultural Education Scholarship Fund*	5%	5%
County Treasury	5%	5%
Department of Natural Resources	4%	4%
Strategic Action Planning Group*	3%	3%
Expanded Learning Opportunity Fund*	2%	5%
Counseling Services for Firefighters	2%	4%
Counseling Services for Emergency Medical Technicians	2%	4%
Domestic Abuse Fund	1%	1%
DUI Coalition	1%	1%
Fallen First Responder Fund*	1%	1%
Pet Overpopulation Fund	1%	1%
School Supply Fund*	Interest Collected from Unpaid Expungement Fees.	Interest Collected from Unpaid Expungement Fees.

6 *\*Indicates new program created by the measure.*

For information on those issue committees that support or oppose the measures on the ballot at the November 3, 2020, election, go to the Colorado Secretary of State's elections center web site hyperlink for ballot and initiative information:

<http://www.sos.state.co.us/pubs/elections/Initiatives/InitiativesHome.html>

<sup>1</sup>Additional information about the programs and services funded by the expungement fee can be found here X. (Note a link to this publication will be added prior to the Blue Book publication).

1 **Arguments For Initiative 200**

- 2 1) The complete deletion of a criminal record is a clean slate and allows a  
3 defendant to reintegrate into society by pursuing work, school, professional  
4 licenses, housing, and other opportunities once unobtainable because of a public  
5 criminal record. Initiative 200 broadens eligibility for expungement, allowing  
6 more defendants to break down barriers to reintegration and benefit from a fresh  
7 start. Expungement provides opportunities for stability and a chance to improve  
8 outcomes, decreasing the likelihood of future criminal activity and costly returns  
9 to the criminal justice system.
- 10 2) Many defendants currently do not know they can expunge or seal a record, do  
11 not know how to do it, or do not have lawyers to advise them. Initiative 200  
12 affords all defendants the same opportunities to expunge a record, as well as  
13 equalizes eligibility requirements for adults and juveniles. Currently, juvenile and  
14 adults face different processes for expungement and sealing, and their  
15 respective records are subject to separate standards of review.
- 16 3) Initiative 200 creates a new revenue stream for important community programs  
17 that would otherwise go unfunded. First responders, veterans, pets, and  
18 education services, among other causes, would all receive money after the state  
19 court system collects and distributes revenue from the expungement fees.  
20 Providing funding to these programs enhance community engagement and  
21 strengthen neighborhood connections.

22 **Arguments Against Initiative 200**

- 23 1) The measure creates an expensive, time-consuming, and complicated process to  
24 expunge a criminal record. Eligible adults and juveniles will have no choice but  
25 to pay an expungement fee with interest, or participate in a time-intensive life  
26 skills development program. The measure favors people with the financial  
27 resources to expunge their criminal records. Many people involved in the  
28 criminal justice system do not have the time, transportation, or money to fulfil this  
29 kind of commitment.
- 30 2) Many criminal justice records will be entirely destroyed if the measure passes,  
31 making them inaccessible for public safety reasons. Under current law, certain  
32 government agencies have access to sealed and expunged records for limited  
33 purposes, such as legal proceedings, firearms purchases, domestic violence  
34 protection orders, law enforcement officer certification, and to identify persons  
35 who are ineligible to hold positions of trust involving children, the elderly, or the  
36 disabled.
- 37 3) Because the measure does not distinguish between juveniles and adults, it is  
38 more costly and difficult for a young person to expunge a juvenile record. The  
39 measure narrows the number of crimes eligible for juvenile expungement, adds a  
40 fee, and increases the time it takes to get a record expunged. Further, the  
41 measure removes incentives to complete rehabilitation or other positive youth  
42 development programs because participation in these programs no longer affects  
43 decisions about the removal of a record.

1 **Estimate of Fiscal Impact for Initiative 200**

2 **State revenue.** Initiative 200 will increase state revenue by \$X in state budget  
3 year 2020-21 (half-year impact) and by \$X in state budget year 2021-22 (full-year  
4 impact). This revenue is from a new expungement fee charged to persons convicted  
5 of certain crimes in the state. The amount of fee revenue collected will depend on  
6 the collection rate of the expungement fee. Current estimates put the collection rate  
7 between 3% and 6%.

8 **State spending.** Starting on January 1, 2021, Initiative 200 will increase state  
9 spending for staff in various agencies to expunge past and current eligible criminal  
10 records and to implement the life skills development program and other programs  
11 created by the measure. In addition, state agencies that receive revenue from the  
12 expungement fee will have additional spending for the programs specified in the  
13 measure.

14 **Local government revenue and spending.** Initiative 200 will increase revenue to  
15 local governments through the allocation of the expungement fee. In addition, local  
16 governments will have additional workload and costs to expunge any criminal  
17 records kept by a local government.