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Judicial Branch

State justice center. Senate Bill 08-206 raises civil filing fees to help fund the consolidation of all of justice-related agencies into a single complex at the current site of the Colorado Supreme Court and the Colorado History Museum (13th and Broadway/Lincoln). These justice-related offices include:

- the Colorado Supreme Court;
- the Colorado Court of Appeals;
- administrative offices of the Judicial Branch;
- the Alternate Defense Counsel;
- the Office of the Child's Representative;
- the Office of the State Public Defender; and
- the Attorney General.

It also allows the construction of a new Colorado History Museum at 12th and Broadway/Lincoln using a limited amount of the State Historical Fund and moneys transferred from the Judicial Branch.

Additionally, the bill authorizes the state to enter into lease-purchase agreements, continuing for 35 years, for the development and construction of a state justice center and a new Colorado State Museum. Since 1979, the state has entered into lease-purchase agreements by issuing certificates of participation (COPs) to finance the debt of capital construction projects. The COPs are tax-exempt government securities that are sold to investors, who then receive COP payments including interest income. Table 1 illustrates the costs associated with the implementation of Senate Bill 08-206.

Table 1. Project Costs Under SB 08-206

Museum		Justice Center	
Project Budget	\$113,000,000*	Project Budget	\$295,000,000*
Payment from Judicial for Land Acquisition	(\$25,000,000)	Revenue from new filing fees received July 2008 through December 2014 (\$25 million of this amount will be transferred to the State Historical Society for land acquisition costs)	(\$70,000,000)
State Historical Fund Portion	(\$11,000,000)		
Total Financing Needed	\$77,000,000	Total Financing Needed	\$225,000,000
Capitalized Interest	\$9,000,000	Capitalized Interest	\$46,000,000
Cost of COP Issuance	\$2,000,000	Cost of COP Issuance	\$6,000,000
Interest Earned	(\$2,000,000)	Interest Earned	(\$8,000,000)
Premium COP Rate	(\$2,000,000)		
TOTAL COP ISSUANCE	\$84,000,000	TOTAL COP ISSUANCE	\$269,000,000

* Figures in the table are rounded.

Judicial performance evaluations. Senate Bill 08-054 establishes the Office of Judicial Performance Evaluation within the Judicial Department. The primary duty of the office will be to administer the Judicial Performance Program. The State Commission on Judicial Performance will oversee office operations. Subject to the commission's supervision, the office is tasked with:

- staffing the state and district commissions, and training their members;
- collecting and distributing data on judicial performance evaluations;
- conducting public education efforts concerning the performance evaluation process;
- measuring public awareness of the process through regular polling; and
- other duties as assigned by the commission.

The bill specifies the terms for members of the state commission and district commissions on judicial performance. The bill amends the powers and duties of the state and district commissions, and specifies criteria for these commissions to use in evaluating judges. As part of this process, the state commission prepares profiles on each judge being evaluated. The bill requires that such profiles include:

- an assessment of the appellate judge's strengths and weaknesses with respect to the judicial performance criteria established by the bill;
- a statement of whether the state commission concludes that the identified deficiency has been satisfactorily addressed by the judge; and
- a summary of the number of commission members who voted for or against the recommendation.

The bill also requires that, for each Supreme Court Justice, each judge in the court of appeals, and each district and county judge, the state commission conduct at least one interim evaluation and to prepare an associated profile. This evaluation is required to include an assessment of the judge's strengths and weaknesses with respect to the judicial performance criteria established by the bill. The judge must be given the opportunity to respond to the evaluation no later than 10 days following its receipt. The state commission is required to publically release the narrative profile simultaneously with the judge's retention year evaluations.

Finally, the bill requires the State Court Administrator to provide statistics on judges being evaluated to both the state and district commissions on judicial performance. The bill extends the repeal date for the Judicial Performance Program to June 20, 2019.

Criminal Justice Records

Sealing criminal justice records. **House Bill 08-1082** reduces the waiting time required for petitioning the court to seal records for an offense that was not charged or was dismissed due to a plea agreement in a separate case from 15 to 10 years. The bill requires a probation department in certain circumstances to advise a defendant of his or her right to seal criminal justice records. Current law allows individuals to petition the court to seal arrest and criminal records information (except for basic identification information) for offenses in which:

- the individual was not charged;
- the case was completely dismissed; or
- the individual was acquitted.

A petition to seal the records of offenses that were not charged or were dismissed due to a plea agreement in a separate case may be filed 15 years or more after the disposition of the case, provided the individual has not been charged for any criminal offense in the intervening 15 years. Records of most traffic offenses and infractions may not be sealed.

The bill expands the provisions for sealing criminal justice records (except for basic identification information) to certain conviction records. Under the bill, a defendant may petition the court to seal certain conviction records 10 or more years after the completion of the sentence in a case, provided the defendant has not been charged for any criminal offense in the intervening 10 years. The bill specifies the procedure for sealing conviction records, including factors to be considered by the judge. Entire cases must be sealed, rather than individual charges within a case. Following a conviction, the court and the defendant's probation officer (when appropriate) are required to advise the defendant of his or her rights concerning the sealing of conviction records, including the procedure for doing so.

An order sealing conviction records does not vacate a conviction and will not deny access to those records by any party or agency required by law to conduct a criminal background check on the defendant. The bill clarifies the circumstances under which criminal justice agencies may view sealed records. Criminal justice agencies that are in possession of sealed conviction records when an inquiry is made by another criminal justice agency are exempt from the requirement to hold such records confidential. The bill prohibits employers (except criminal justice agencies), state and local government agencies and officials, landlords, and employees from requiring an applicant to disclose information contained in sealed conviction records. The bar committee of the Colorado State Board of Law Examiners is permitted to make further inquiries into the fact of a conviction that comes to the attention of the bar committee through other means.

The bill allows records to be unsealed in the event that the defendant is convicted of a subsequent criminal offense. Additionally, a member of the public may petition the court to unseal records if it can be shown that circumstances have substantially changed since the order sealing the records was issued.

Records of convictions for most misdemeanor offenses, petty offenses, offenses against municipal ordinances, and class 5 and class 6 felonies involving controlled substances may be sealed. The bill does not allow for the sealing of records of conviction for the following misdemeanor offenses:

- unauthorized sale of insurance;
- offenses associated with the Colorado Fair Debt Collection Act;
- false imprisonment;
- most traffic offenses or infractions;
- sexual offenses;
- fraudulent sales or business practices;
- child abuse;
- neglect of an at-risk adult or at-risk juvenile;
- offenses involving obscenity;
- escape from custody;
- bribery, abuse of public office, and perjury; and
- offenses relating to firearms and weapons.

The bill specifies that the conviction records sealing procedures will apply to convictions occurring on or after July 1, 2008. It allows records for convictions entered prior to that date to be sealed with the consent of the prosecutor. Finally, the bill clarifies that sealing records does not limit the rules of evidence or discovery.

Electronic read-only court records access. **House Bill 08-1264** authorizes statewide, electronic, read-only access to the name index and register of actions of court records within the data system of the Judicial Branch. This read-only access will be provided to representatives of the following agencies or attorneys appointed by the court:

- county departments of social services and representing attorneys;
- the Office of the State Public Defender;
- the Office of the Child's Representative and guardians ad litem under contract;
- the Office of the Alternate Defense Counsel and attorneys under contract by the office;

- respondent parent counsel appointed by the court; and
- any state or local agency that performs any activity related to the investigation, trial, incarceration, or rehabilitation of a person involved in criminal activity.

The bill requires that agencies gaining access to this information ensure that individuals using the system receive appropriate training regarding the usage and confidentiality of the system. Finally, the bill authorizes the Colorado Supreme Court to adopt rules regarding this access and requires users to receive training on the appropriate usage and confidentiality.

Criminal Competency

Competency to proceed. **House Bill 08-1392** reorganizes current statutory provisions addressing "competency to proceed" issues in criminal cases under a new article. The bill:

- expands who may be determined to be incompetent to proceed to include those with a developmental disability;
- changes the standard for "incompetent to proceed" from "mental disease or defect" to "mental disability" as defined in the bill;
- sets specific timelines for competency hearing requests, setting a new hearing date, and completing a competency evaluation rather than leaving it to the discretion of the court;
- requires the court to review competency every 90 days rather than the current standard of every 6 months; and
- allows the temporary removal of a defendant from a commitment facility, without court authorization, for needed medical treatment.

Juvenile competency. **House Bill 08-1142**, which was postponed indefinitely, would have required the court to base a determination regarding a juvenile defendant's competence to proceed with trial on the juvenile's ability to:

- rationally and factually appreciate the allegations;
- appreciate and make rational decisions concerning potential penalties;
- understand the adversarial nature of the legal process and rationally participate in the proceedings; and
- display appropriate courtroom behavior and testify relevantly.

The bill also attempted to change the standard for juveniles who are incompetent to proceed. A juvenile would be considered incompetent if, as a result of mental disability, developmental disability, or immature development, the juvenile was unable to consult with a lawyer with a reasonable degree of understanding to assist in his or her defense, or had no rational understanding of the proceedings. The bill defined "immature development" as a case where the cognitive or psychosocial capacities necessary for competency have not yet developed to the functional capacity necessary for a determination that the juvenile is competent to proceed. The bill established this new standard, not only in Title 16, but also in Section 19-2-1300.3 (3) C.R.S., of the Children's Code, thus making it applicable to all juvenile delinquency cases filed in Colorado.

Victims Services

Victims Assistance and Law Enforcement (VALE) Fund. House Bill 08-1112 changes procedures governing the distribution of money from the VALE Fund. It allows the Division of Criminal Justice in the Department of Public Safety, with recommendations from the VALE advisory board, to distribute the money in the VALE Fund directly to certain agencies for the implementation and coordination of statewide victim services. The amount distributed to each agency must be at least as much as the total amount distributed to the agency in the previous fiscal year, less any moneys budgeted for one-time projects and additional grant moneys received through the regular grant process.

The bill clarifies which agencies and organizations may apply for grants through the fund's grant process. The VALE advisory board is required to evaluate the grant applications and make recommendations to the Division of Criminal Justice.

Sexual assault victim protections. House Bill 08-1217 prohibits law enforcement agencies, prosecutors, or other governmental officials from:

- asking a sexual assault victim to take a lie detector test as a condition of proceeding with the criminal investigation or prosecution; and
- making a forensic medical examination, including collection of evidence, contingent upon a victim's willingness to participate in the criminal justice process.

This bill also requires the Division of Criminal Justice, and not the victim, to pay for this medical examination. Finally, the bill requires the medical facility that performs such a medical examination on the request of the victim (as opposed to the law enforcement agency) to contact the law enforcement agency in whose jurisdiction the crime occurred regarding the storage of evidence. That agency is then required to retrieve the evidence, and store it for at least 2 years.

Victim notification of bond issues. House Bill 08-1263 specifies when victims of crimes have the right to be notified of court actions involving a defendant's bond. Included are situations in which a defendant's bond is set lower than the scheduled or customary amount for a specific charge, the type of bond changes, a condition of the bond is modified, or the bond is lowered after the initial bond hearing. The bill further specifies that a victim of a crime has the right to be heard at certain court proceedings, including a hearing concerning the defendant's bond. Finally, the district attorney is required to inform a victim of the charges to be filed against an individual, prior to filing the charges, if the charge to be filed may result in the court issuing a new, lower, bond for the individual.

Special Advocates

Court-appointed Special Advocate (CASA) Program. Current law provides for the establishment of CASA programs in adjacent judicial districts. CASA programs screen and train volunteers to advocate for the best interests of children in child abuse and neglect cases. Upon appointment by a judge or magistrate, a CASA volunteer:

- conducts an independent investigation to provide factual information to the court about the child and the child's family;
- determines if an appropriate treatment plan has been created for the child and is being followed;
- makes recommendations regarding placement, visitation, and appropriate services for the child and his or her family;
- monitors and prepares written reports regarding the child's case; and
- serves as a witness in court, if called upon to do so.

House Bill 08-1018 permits judicial districts, that are not adjacent, to establish a volunteer CASA program. **Senate Bill 08-047**, concerning funding for CASA programs, would have raised the fee to obtain a marriage license from \$10 to \$35 in order to provide funding for CASA programs across Colorado. The bill failed in the House Judiciary Committee.

Bail and Bonds

Require bail for DUI offenses. Currently, offenders suspected of committing alcohol- or drug-related offenses are processed in two ways. Usually, the individual is arrested, booked, bail is set, and, if the individual is able to post bail, he or she is released. In larger jurisdictions with overcrowded jails, some offenders are not booked, but are released into the custody of a sober adult and given a summons to return to court for the offender's first appearance. No bail is set because the individual was not booked into custody. **Senate Bill 08-076** allows the court to set bail, including a requirement to abide by certain conditions, for an individual charged with certain alcohol- or drug-related driving offenses, even if the offender is given a summons and released.

Minimum bail for drug distribution. **Senate Bill 08-134** sets a minimum bail amount of \$50,000 for all persons arrested for drug trafficking, and requires the Office of the State Court Administrator to adjust this amount for inflation every 10 years. The bill allows the court to set bail at an alternative amount upon a motion and a showing of good cause by either the district attorney or the defendant. Senate Bill 08-134 also creates the County Jail Assistance Fund and half of the money collected from forfeited bonds and fees will be deposited into this fund for the maintenance and operation of county jails.

Bail for DUI and felony eluding. **House Bill 08-1377** sets bail at \$50,000 for an individual who is arrested for vehicular eluding and driving under the influence in the same incident. The court has the discretion to set bail for a different amount after considering all relevant factors.

Protection Orders

Protection order crime. Current law makes it a crime to violate a protection order if an individual has been personally served with the order or the court informs the individual of the contents of the order. **Senate Bill 08-236** expands the existing crime of violation of a protection order to include a violation that occurs after the restrained individual acquires knowledge from a law enforcement official of the contents of the protection order.