

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0949.01 Michael Dohr x4347

HOUSE BILL 17-1208

HOUSE SPONSORSHIP

Weissman,

SENATE SPONSORSHIP

Gardner,

House Committees

Judiciary
Finance
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING CLARIFICATIONS TO THE CRIMINAL JUSTICE RECORDS**
102 **SEALING PROCESS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

During the 2016 session, the general assembly adopted an expedited process for sealing the criminal records of a person who is acquitted, whose case is completely dismissed, who completed a diversion agreement, or who completed a deferred judgment and sentence. The bill clarifies that many of the general provisions related to criminal record sealing also apply to this expedited process. The bill

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
Amended 2nd Reading
April 28, 2017

clarifies that if the case involved a crime that requires a victim to be notified of a motion for record sealing, the court shall allow up to 42 days to provide that notification before ruling on the motion on record sealing. The bill clarifies that the filing fee for state court cases goes to the judicial stabilization fund and the filing fee in a municipal court goes to the municipality. The bill allows the prosecuting attorney or law enforcement agency to release sealed police reports or protection orders to the named victim, if the victim demonstrates that there is a verifiable need for the reports for a lawful purpose.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-701, **add** (9)
3 as follows:

4 **24-72-701. Definitions.** As used in this part 7, unless the context
5 otherwise requires:

6 (9) "VICTIM" MEANS ANY NATURAL PERSON AGAINST WHOM ANY
7 CRIME HAS BEEN PERPETRATED OR ATTEMPTED, UNLESS THE PERSON IS
8 ACCOUNTABLE FOR THE CRIME OR A CRIME ARISING FROM THE SAME
9 CONDUCT OR PLAN AS THE CRIME IS DEFINED UNDER THE LAWS OF THIS
10 STATE OR OF THE UNITED STATES, OR, IF SUCH PERSON IS DECEASED OR
11 INCAPACITATED, THE PERSON'S SPOUSE, PARENT, LEGAL GUARDIAN, CHILD,
12 SIBLING, GRANDPARENT, GRANDCHILD, SIGNIFICANT OTHER, OR OTHER
13 LAWFUL REPRESENTATIVE.

14 **SECTION 2.** In Colorado Revised Statutes, 24-72-702, **amend**
15 (1)(a)(II) introductory portion, (1)(a)(II)(B), and (1)(a)(III)(B); and **add**
16 (1)(f.5) as follows:

17 **24-72-702. Sealing of arrest and criminal records other than**
18 **convictions.** (1) (a) (II) Except as provided in ~~subparagraph (II)~~ of this
19 ~~paragraph (a)~~ SUBSECTION (1)(a)(III) OF THIS SECTION, arrest or criminal
20 records information may not be sealed if:

1 (B) A dismissal occurs as part of a plea agreement in a separate
2 case IN WHICH A JUDGMENT OF CONVICTION HAS BEEN ENTERED; or

3 (III) A person in interest may petition the district court of the
4 district in which any arrest and criminal records information pertaining
5 to the person in interest is located for the sealing of all of said records,
6 except basic identification information, if the records are records of
7 official actions involving a case that was dismissed due to a plea
8 agreement in a separate case, and if:

9 (B) The person in interest has not been ~~charged for~~ CONVICTED OF
10 a criminal offense in the ten years since the date of the final disposition
11 of all criminal proceedings against the person in interest.

12 (f.5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(e)
13 AND (1)(f) OF THIS SECTION, THE PROSECUTING ATTORNEY OR THE LAW
14 ENFORCEMENT AGENCY MAY RELEASE TO THE VICTIM [REDACTED] IN THE SEALED
15 CASE COPIES OF POLICE REPORTS OR ANY PROTECTION ORDERS ISSUED IN
16 THE SEALED CASE IF THE VICTIM DEMONSTRATES TO THE PROSECUTING
17 ATTORNEY OR LAW ENFORCEMENT AGENCY A [REDACTED] NEED FOR THE REPORTS
18 OR COURT ORDERS FOR A LAWFUL PURPOSE. THE PROSECUTING ATTORNEY,
19 INCLUDING STAFF OF THE PROSECUTING ATTORNEY'S OFFICE OR A VICTIM
20 OR WITNESS ASSISTANCE PROGRAM, OR THE STAFF OF A LAW
21 ENFORCEMENT AGENCY OR LAW ENFORCEMENT VICTIM ASSISTANCE
22 PROGRAM, MAY DISCUSS THE SEALED CASE, THE RESULTS OF THE SEALING
23 PROCEEDINGS, AND INFORMATION RELATED TO ANY VICTIM SERVICES
24 AVAILABLE TO THE VICTIM.

25 **SECTION 3.** In Colorado Revised Statutes, **amend** 24-72-702.5
26 as follows:

27 **24-72-702.5. Sealing criminal justice records other than**

1 **convictions - simplified process - defendant option - processing fees.**

2 (1)(a) In addition to the procedures in section 24-72-702, any time a case
3 against a ~~person in interest~~ DEFENDANT is completely dismissed, ~~where~~
4 WHEN the ~~person in interest~~ DEFENDANT is acquitted OF ALL COUNTS IN
5 THE CASE, the ~~person in interest~~ DEFENDANT completes a diversion
6 agreement under section 18-1.3-101, ~~C.R.S.~~, or the ~~person in interest~~
7 DEFENDANT completes a deferred judgment and sentence under section
8 18-1.3-102, ~~C.R.S.~~, and all counts are dismissed, the court shall give the
9 defendant eligible to have his or her criminal justice records sealed the
10 option of immediately moving to have his or her criminal justice records
11 sealed. This motion may be informal and may be made in open court at
12 the time of the dismissal of the case or the acquittal of the defendant. The
13 motion may also be made by the defendant at a ANY time subsequent to
14 the dismissal or acquittal through the filing of a written motion IN THE
15 CRIMINAL CASE WITH WRITTEN NOTICE TO THE PROSECUTING ATTORNEY.

16 (b) If the defendant moves under ~~this subsection (1)~~ SUBSECTION
17 (1)(a) OF THIS SECTION to seal his or her criminal justice records under the
18 expedited procedures of this section, the court shall promptly process the
19 defendant's request to seal the criminal justice records within the criminal
20 case without the filing of an independent civil action ~~When the court seals~~
21 ~~criminal justice records under this section the court shall provide a copy~~
22 ~~of the court's order to each custodian who may have custody of any of the~~
23 ~~records subject to the order. The person in interest may also provide a~~
24 ~~copy of the order to any other custodian of records subject to the order~~
25 AND WITHOUT ANY FURTHER EVIDENCE EXCEPT FOR EVIDENCE OF THE
26 DISMISSAL OR ACQUITTAL. MOTIONS FILED UNDER THIS SECTION ARE
27 PROCEDURAL IN NATURE AND SEALING PURSUANT TO THIS SECTION

1 APPLIES RETROACTIVELY FOR ALL ELIGIBLE CASES WHEN THE CASE HAS
2 BEEN COMPLETELY DISMISSED OR THE DEFENDANT HAS BEEN ACQUITTED
3 OF ALL COUNTS IN A STATE OR MUNICIPAL CRIMINAL CASE.

4 (c) NOTWITHSTANDING THE PROVISION OF SUBSECTION (1)(b) OF
5 THIS SECTION, IF THE DEFENDANT IS ACQUITTED OF OR IF THE CASE
6 DISMISSED IS A CRIME ENUMERATED IN SECTION 24-4.1-302 (1) IN WHICH
7 NOTICE OF A HEARING ON A MOTION TO SEAL IS REQUIRED PURSUANT TO
8 SECTION 24-4.1-303 (11)(b.7), THE COURT SHALL ALLOW THE DISTRICT
9 ATTORNEY OPPORTUNITY TO NOTIFY THE VICTIM AND SHALL SET A RETURN
10 DATE FOR A HEARING ON THE SEALING MOTION NO LATER THAN
11 FORTY-TWO DAYS AFTER RECEIPT OF THE MOTION.

12 (d) WHEN THE COURT SEALS CRIMINAL JUSTICE RECORDS UNDER
13 THIS SECTION, THE COURT SHALL PROVIDE A COPY OF THE COURT ORDER
14 TO THE COLORADO BUREAU OF INVESTIGATION, AND THE DEFENDANT
15 SHALL PAY TO THE BUREAU ANY COSTS RELATED TO THE SEALING OF HIS
16 OR HER CRIMINAL JUSTICE RECORDS IN THE CUSTODY OF THE BUREAU. THE
17 COURT SHALL ALSO PROVIDE A COPY OF THE COURT ORDER TO EACH
18 CUSTODIAN WHO MAY HAVE CUSTODY OF ANY RECORDS SUBJECT TO THE
19 ORDER. THE DEFENDANT SHALL PROVIDE TO THE COURT, WITHIN SEVEN
20 DAYS OF THE MOTION IF MADE ORALLY OR IN CONJUNCTION WITH THE
21 MOTION IF FILED IN WRITING, A LIST OF ALL AGENCY CUSTODIANS WHO
22 MAY HAVE CUSTODY OF ANY RECORDS SUBJECT TO THE ORDER.
23 ADDITIONALLY, THE DEFENDANT MAY ALSO PROVIDE A COPY OF THE
24 ORDER TO ANY OTHER CUSTODIAN OF RECORDS SUBJECT TO THE ORDER.
25 EACH CUSTODIAN THAT RECEIVES A COPY OF THE ORDER SHALL REMOVE
26 THE RECORDS THAT ARE SUBJECT TO THE ORDER FROM ITS RECORDS.

27 (e) THE PROVISIONS OF SECTION 24-72-702 (1)(d) TO (1)(g) AND

1 SECTION 24-72-702 (4) APPLY TO THIS SECTION.

2 (f) THIS SECTION DOES NOT APPLY TO RECORDS THAT ARE SUBJECT
3 TO THE PROCEDURE SET FORTH IN SECTION 18-13-122 (13).

4 (2) (a) A ~~person in interest~~ DEFENDANT moving to have his or her
5 criminal justice records sealed under this section shall pay a processing
6 fee of sixty-five dollars to cover the actual costs related to the sealing of
7 the criminal justice records, WHICH MAY BE WAIVED BY THE COURT UPON
8 A DETERMINATION OF INDIGENCY.

9 (b) WHEN THE MOTION TO SEAL THE CRIMINAL CASE IS FILED IN
10 STATE COURT, the processing fees collected under ~~paragraph (a) of this~~
11 ~~subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION must be transmitted to
12 the state treasurer and credited to the judicial stabilization cash fund
13 created in section 13-32-101 (6). ~~C.R.S.~~

14 (c) WHEN THE MOTION TO SEAL THE CRIMINAL CASE IS FILED IN
15 MUNICIPAL COURT, THE PROCESSING FEES COLLECTED UNDER SUBSECTION
16 (2)(a) OF THIS SECTION MUST BE REPORTED AND PAID AS MUNICIPAL COST
17 AND MUST BE TRANSMITTED TO THE TREASURER OF THE MUNICIPALITY
18 AND DEPOSITED IN THE GENERAL FUND OF THE MUNICIPALITY PURSUANT
19 TO SECTION 13-10-115.

20 **SECTION 4. Act subject to petition - effective date.** This act
21 takes effect September 1, 2017; except that, if a referendum petition is
22 filed pursuant to section 1 (3) of article V of the state constitution against
23 this act or an item, section, or part of this act within the ninety-day period
24 after final adjournment of the general assembly, then the act, item,
25 section, or part will not take effect unless approved by the people at the
26 general election to be held in November 2018 and, in such case, will take

- 1 effect on the date of the official declaration of the vote thereon by the
- 2 governor.