

24-72-307. Challenge to accuracy and completeness - appeals. (1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the refusal of correction was proper, it shall order the custodian to make such correction, and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

Source: L. 77, p. 1248, § 1.

24-72-308. Sealing or limiting release of records. (1) Access to records limited without petition. (a) Effective thirty days after an order of acquittal or dismissal is entered, unless the defendant requests in writing that the record remain open, the arrest and criminal records information contained in records of an official action in which the defendant is acquitted or in which charges are dismissed shall automatically be limited to access only by the person in interest, by his criminal defense attorney, or by a criminal justice agency of this state or to a similar agency of the United States government or of any of the states of the United States of America. The defendant may subsequently withdraw the request that the record remain open by submitting a written authorization to the court to enter an order limiting access. Upon the receipt of such an authorization, the court shall enter the order. The provisions of paragraph (j) of subsection (2) of this section shall apply to any order entered pursuant to this paragraph (a).

(b) (I) The custodian of any record of an arrest shall not allow inspection of the record of that arrest if the records in his custody and control do not show that the arrest was followed by the filing of charges thereon within two years after the arrest or was followed by a disposition prior to a trial within two years after the arrest; except that, subject to the provisions of paragraph (a) of this subsection (1) and subsection (2) of this section, the custodian shall allow the inspection of such a record if the person seeking the inspection provides information to the custodian which shows that the

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ess - appeals. (1) Any final justice records purporting to show the accuracy and completeness, insofar as they are affected.

In correction, the person applying for the records shall be notified of the refusal, and the person shall be given an opportunity to evaluate the records.

The person shall be notified in writing within thirty days from the date of the request and to the person making the request, in whole or in part, as communicated to the applicant.

In correction of records is not required wherein the record is not required to show cause why a hearing on such application shall be held unless the court finds that the refusal of the custodian to make the records available was arbitrary or capricious, in which case the custodian was required to pay fees in an amount to be determined by the court.

(1) Access to records. (a) Any person in interest may petition the court in which the arrest and criminal records information pertaining to him is located for the limiting of release of all or any part of said record, except basic identification information. If a criminal action has previously been filed in a court, the petition provided for in this subsection (2) shall be made a part of such action, and no additional docket fee shall be required. Such a petition shall be filed pursuant to and shall be governed by the provisions of paragraph (b) of this subsection (2).

(b) An order limiting the release of all or any part of said record may be obtained if:

(I) The record is a record of an official action involving conviction for a misdemeanor or a petty offense after which the individual has not been formally charged with another crime, other than a petty offense or a class A or class B traffic infraction, for a period of five years following the completion of his sentence or the satisfaction of any conditions imposed in lieu of his sentence; or

(II) The record is a record of an official action involving conviction for a felony after which the individual has not been formally charged with a crime, other than a petty offense or a class A or class B traffic infraction, for a period of seven years following the completion of his sentence or the satisfaction of any conditions imposed in lieu of his sentence.

(c) The state court administrator shall prepare and distribute to the clerks of the courts a standardized form to be used for all petitions for the limiting of release of said records. The clerks shall make the form available at their offices and upon request shall mail the form to any person requesting the same.

(d) Within five days of the receipt of such a form which has been completed and notarized, the clerk of the court shall send copies thereof to the district attorney.

(e) If the district attorney does not file a response objecting to the petition for the limiting of release of said records within thirty days after the receipt of the petition by the clerk of the court, the court shall grant the petition and order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. This order shall be made and entered without further action by the petitioner and without his appearance.

(f) (I) If the district attorney files a response objecting to the petition for the limiting of release of said records within thirty days after the receipt of the petition by the clerk of the court, stating that he can show unto the court that the provisions of paragraph (b) of this subsection (2) do not apply to

arrest has been followed by the filing of charges within two years after the arrest or has been followed by a disposition prior to a trial within two years after the arrest.

(II) For the purposes of this paragraph (b), "disposition" includes deferred prosecution and deferred sentencing.

(III) This paragraph (b) shall not restrict the right of the person in interest to inspect his own records, nor shall it deny access thereto by a criminal justice agency of this state or by a similar agency of the United States government or any of the states of the United States of America.

(2) Petition to limit release of records. (a) Any person in interest may petition the court in which the arrest and criminal records information pertaining to him is located for the limiting of release of all or any part of said record, except basic identification information. If a criminal action has previously been filed in a court, the petition provided for in this subsection (2) shall be made a part of such action, and no additional docket fee shall be required. Such a petition shall be filed pursuant to and shall be governed by the provisions of paragraph (b) of this subsection (2).

(b) An order limiting the release of all or any part of said record may be obtained if:

(I) The record is a record of an official action involving conviction for a misdemeanor or a petty offense after which the individual has not been formally charged with another crime, other than a petty offense or a class A or class B traffic infraction, for a period of five years following the completion of his sentence or the satisfaction of any conditions imposed in lieu of his sentence; or

(II) The record is a record of an official action involving conviction for a felony after which the individual has not been formally charged with a crime, other than a petty offense or a class A or class B traffic infraction, for a period of seven years following the completion of his sentence or the satisfaction of any conditions imposed in lieu of his sentence.

(c) The state court administrator shall prepare and distribute to the clerks of the courts a standardized form to be used for all petitions for the limiting of release of said records. The clerks shall make the form available at their offices and upon request shall mail the form to any person requesting the same.

(d) Within five days of the receipt of such a form which has been completed and notarized, the clerk of the court shall send copies thereof to the district attorney.

(e) If the district attorney does not file a response objecting to the petition for the limiting of release of said records within thirty days after the receipt of the petition by the clerk of the court, the court shall grant the petition and order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. This order shall be made and entered without further action by the petitioner and without his appearance.

(f) (I) If the district attorney files a response objecting to the petition for the limiting of release of said records within thirty days after the receipt of the petition by the clerk of the court, stating that he can show unto the court that the provisions of paragraph (b) of this subsection (2) do not apply to

the petitioner, the court shall deny the petition unless the petitioner files a written request for a hearing thereon within sixty days after the original date of the receipt of the petition by the clerk of the court.

(II) At the time of filing the response objecting to the petition, the district attorney shall serve upon the petitioner a copy of the response and a notice indicating to the petitioner that his petition will be denied unless he files a written request for a hearing within sixty days after the original date of receipt of the petition by the clerk of the court.

(g) If a request for a hearing is received within the sixty-day period, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and notify the petitioner and the district attorney of the date of said hearing. At the hearing, the court shall grant the petition unless the district attorney shows that none of the provisions of paragraph (b) of this subsection (2) apply to the petitioner. Upon granting the petition, the court shall order that the record shall only be released to the person in interest or to a criminal justice agency of this state or to a similar agency of the United States government or any of the states of the United States of America. The hearing shall be held and the petition granted or denied whether or not the petitioner appears.

(h) The response and notice required by paragraph (f) of this subsection (2) and the notification required by paragraph (g) of this subsection (2) shall be served upon the petitioner by depositing the same in the United States mail, postage prepaid, certified, and return receipt requested, addressed to the petitioner at the address provided in the petition.

(i) Any order entered pursuant to this section shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order pursuant to this section, it shall provide the Colorado bureau of investigation with a copy thereof. The Colorado bureau of investigation shall forward copies of such an order to every custodian which has furnished information to it pursuant to section 24-32-412 (3) concerning the subject of the order.

(j) Every custodian of the arrest and criminal records information subject to the order, within one hundred twenty days after the entry of the order unless it is stayed pending an appeal, shall advise the court and the petitioner in writing of compliance with the order.

(k) All arrest and criminal records information, whether existing prior to or on or after May 5, 1978, except basic identification information, is subject to an order limiting the release thereof in accordance with this subsection (2).

(3) Sealing of records. (a) Any person in interest may petition the district court of the district in which the arrest and criminal records information pertaining to him is located for the sealing of all or any part of said record, except basic identification information.

(b) Upon the filing of a petition or the entering of a court order relating to the sealing of records, the court shall set a date for a hearing, which hearing may be closed at the court's discretion, and shall notify the district attorney, the arresting agency, and any other person or agency who the court has reason to believe may have relevant information related to the sealing of such record.

(c) (I) Upon a finding of dangers of unwarranted in retaining the records except basic identification neither sealing of the records by the agency would serve the purpose of order limiting access to the records.

(II) Any order entered to every custodian who maintains criminal records information shall require that the custodian enters an order pursuant to this section. The bureau of investigation shall forward the information furnished to the subject of the order.

(III) Every custodian subject to the order, with the exception of the person in interest, shall be notified in writing of compliance with the order.

(d) Upon the entry of the order, the subject official and any person in interest and any person making any inquiry in the matter shall be notified if a record exists with respect to the subject of the order.

(e) Inspection of the records permitted by the court shall be limited to the subject of such records and for those purposes only.

(f) (I) Employers, agencies, officials, or any other way in which the records are maintained in sealed records concerning arrest and conviction shall include a reference to the records in any state that no such records shall not be denied solely on the basis of criminal records information.

(II) Subparagraph (I) of this section shall not apply to inquiries into the fact of a bar committee through the board of law examinations of an applicant which justifies his release from criminal records information through other means.

(g) All arrest and conviction records on or after May 31, 1977, except basic identification information, shall be sealed in accordance with this section.

the petitioner files a petition after the original date

petition, the district court shall respond and a notice shall be filed unless he files a petition after the original date of

sixty-day period, the court shall close at the court's convenience of the date of the petition unless the district court orders otherwise. Paragraph (b) of this subsection, the court shall order in interest or to the benefit of the United States or any other person. The court shall determine whether or not the

of this subsection and subsection (2) shall apply to the United States or any other person, addressed to

be directed to every arrest and criminal record. Whenever a court orders the Colorado bureau of investigation to forward copies of such an order to every custodian which has furnished information concerning the subject of

information subject to the entry of the order and the petitioner

information existing prior to the entry of the order, is subject to this subsection

petition the district court shall order the sealing of the information part of said record,

court order relating to the sealing, which hearing shall be held by the district attorney who the court orders to the sealing

(c) (I) Upon a finding that the harm to privacy of the person in interest or dangers of unwarranted adverse consequences outweigh the public interest in retaining the records, the court may order such records, or any part thereof except basic identification information, to be sealed. If the court finds that neither sealing of the records nor maintaining of the records unsealed by the agency would serve the ends of justice, the court may enter an appropriate order limiting access to such records.

(II) Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order pursuant to this paragraph (c), it shall provide the Colorado bureau of investigation with a copy thereof. The Colorado bureau of investigation shall forward copies of such an order to every custodian which has furnished information to it pursuant to section 24-32-412 (3) concerning the subject of the order.

(III) Every custodian of the arrest and criminal records information subject to the order, within one hundred twenty days after the entry of the order unless it is stayed pending an appeal, shall advise the court and the petitioner in writing of compliance with the order.

(d) Upon the entry of an order to seal the records, or any part thereof, the subject official actions shall be deemed never to have occurred, and the person in interest and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such action ever occurred and that no such record exists with respect to such person.

(e) Inspection of the records included in the order may thereafter be permitted by the court only upon petition by the person in interest who is the subject of such records or by the district attorney and only to those persons and for those purposes named in such petition.

(f) (I) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(II) Subparagraph (I) of this paragraph (f) does not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction which comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners has a right to inquire into the moral and ethical qualifications of an applicant, and the applicant has no right to privacy or privilege which justifies his refusal to answer to any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

(g) All arrest and criminal records information existing prior to December 31, 1977, except basic identification information, is also subject to sealing in accordance with this part 3.

(h) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records; except that, upon the petition of a person in interest who has received a pardon after a conviction, the court shall order the physical destruction of the arrest and criminal records information relating to that pardon.

(4) **Advisements.** (a) Whenever a defendant has charges against him dismissed, is acquitted, or is sentenced following a conviction, the court shall provide him with a written advisement of his rights concerning the sealing or limiting of release of his criminal justice records if he complies with the applicable provisions of subsections (1) to (3) of this section.

(b) Whenever a defendant completes his sentence or satisfies the conditions imposed in lieu of his sentence, the person having immediate supervision of the defendant when he is released or the prison facility releasing the defendant shall again provide the defendant a written advisement of his right to petition for an order of court sealing or limiting the release of his criminal justice records if he complies with the applicable provisions of subsections (1) to (3) of this section.

(5) **Exceptions.** (a) This section shall not apply to records pertaining to any class 2 traffic offense or to any class A or class B traffic infraction.

(b) The limited access provided for in subsection (1) of this section and court orders sealing or limiting the release of records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

Source: L. 77, p. 1249, § 1; L. 78, pp. 403, 406, § § 2, 3; L. 79, p. 975, § 1; L. 81, p. 1238, § 2; L. 82, p. 655, § 8.

Editor's note: Section 121 of chapter 173, Session Laws of Colorado 1982, provides that the act amending subsections (2) (b) (I), (2) (b) (II), and (5) (a) is effective January 1, 1983, and applies to offenses committed on or after said date.

Section indicates the general assembly's intent to preserve the complete criminal justice record, but in a form that protects the individual named from any harmful effects. *People v. Wright*, 43 Colo. App. 30, 598 P.2d 157 (1979).

Physical destruction of records not generally allowed. By fashioning the remedy of sealing records, the general assembly did not intend

that the physical destruction of the records also be allowed in most situations. *People v. Wright*, 43 Colo. App. 30, 598 P.2d 157 (1979).

Applied in *Tipton v. City of Lakewood ex rel. People*, 198 Colo. 18, 595 P.2d 689 (1979); *People v. Whittle*, ___ Colo. App. ___, 628 P.2d 169 (1981).

24-72-309. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

Source: L. 77, p. 1250, § 1.

Applied in *People v. Wright*, 43 Colo. App. 30, 598 P.2d 157 (1979).

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