

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

REREVISED

*This Version Includes All Amendments
Adopted in the Second House*

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

Finance
Appropriations

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.*

SENATE
Amended 3rd Reading
May 10, 2017

SENATE
Amended 2nd Reading
May 9, 2017

HOUSE
3rd Reading Unamended
May 1, 2017

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 and (1)(a)(II)(B); and **add** (1)(f.5) as
16 follows:

17 **24-72-702. Sealing of arrest and criminal records other than**
18 **convictions.** (1) (a) (II) Except as provided in subparagraph (H) 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 (f.5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(e)
4 AND (1)(f) OF THIS SECTION, THE PROSECUTING ATTORNEY OR THE LAW
5 ENFORCEMENT AGENCY MAY RELEASE TO THE VICTIM [REDACTED] IN THE SEALED
6 CASE COPIES OF POLICE REPORTS OR ANY PROTECTION ORDERS ISSUED IN
7 THE SEALED CASE IF THE VICTIM DEMONSTRATES TO THE PROSECUTING
8 ATTORNEY OR LAW ENFORCEMENT AGENCY A [REDACTED] NEED FOR THE REPORTS
9 OR COURT ORDERS FOR A LAWFUL PURPOSE. THE PROSECUTING ATTORNEY,
10 INCLUDING STAFF OF THE PROSECUTING ATTORNEY'S OFFICE OR A VICTIM
11 OR WITNESS ASSISTANCE PROGRAM, OR THE STAFF OF A LAW
12 ENFORCEMENT AGENCY OR LAW ENFORCEMENT VICTIM ASSISTANCE
13 PROGRAM, MAY DISCUSS THE SEALED CASE, THE RESULTS OF THE SEALING
14 PROCEEDINGS, AND INFORMATION RELATED TO ANY VICTIM SERVICES
15 AVAILABLE TO THE VICTIM.

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

18 **24-72-702.5. Sealing criminal justice records other than**
19 **convictions - simplified process - defendant option - processing fees.**
20 (1) (a) In addition to the procedures in section 24-72-702, any time a case
21 against a ~~person in interest~~ DEFENDANT is completely dismissed, ~~where~~
22 WHEN the ~~person in interest~~ DEFENDANT is acquitted OF ALL COUNTS IN
23 THE CASE, the ~~person in interest~~ DEFENDANT completes a diversion
24 agreement under section 18-1.3-101, ~~C.R.S.~~, or the ~~person in interest~~
25 DEFENDANT completes a deferred judgment and sentence under section
26 18-1.3-102, ~~C.R.S.~~, and all counts are dismissed, the court shall give the
27 defendant eligible to have his or her criminal justice records sealed the

1 option of immediately moving to have his or her criminal justice records
2 sealed. This motion may be informal and may be made in open court at
3 the time of the dismissal of the case or the acquittal of the defendant. The
4 motion may also be made by the defendant at a ANY time subsequent to
5 the dismissal or acquittal through the filing of a written motion IN THE
6 CRIMINAL CASE WITH WRITTEN NOTICE TO THE PROSECUTING ATTORNEY.

7 (b) If the defendant moves under ~~this subsection (1)~~ SUBSECTION
8 (1)(a) OF THIS SECTION to seal his or her criminal justice records under the
9 expedited procedures of this section, the court shall promptly process the
10 defendant's request to seal the criminal justice records within the criminal
11 case without the filing of an independent civil action ~~When the court seals~~
12 ~~criminal justice records under this section the court shall provide a copy~~
13 ~~of the court's order to each custodian who may have custody of any of the~~
14 ~~records subject to the order. The person in interest may also provide a~~
15 ~~copy of the order to any other custodian of records subject to the order~~
16 AND WITHOUT ANY FURTHER EVIDENCE EXCEPT FOR EVIDENCE OF THE
17 DISMISSAL OR ACQUITTAL. MOTIONS FILED UNDER THIS SECTION ARE
18 PROCEDURAL IN NATURE AND SEALING PURSUANT TO THIS SECTION
19 APPLIES RETROACTIVELY FOR ALL ELIGIBLE CASES WHEN THE CASE HAS
20 BEEN COMPLETELY DISMISSED OR THE DEFENDANT HAS BEEN ACQUITTED
21 OF ALL COUNTS IN A STATE OR MUNICIPAL CRIMINAL CASE.

22 (c) NOTWITHSTANDING THE PROVISION OF SUBSECTION (1)(b) OF
23 THIS SECTION, IF THE DEFENDANT IS ACQUITTED OF OR IF THE CASE
24 DISMISSED IS A CRIME ENUMERATED IN SECTION 24-4.1-302 (1) IN WHICH
25 NOTICE OF A HEARING ON A MOTION TO SEAL IS REQUIRED PURSUANT TO
26 SECTION 24-4.1-303 (11)(b.7), THE COURT SHALL ALLOW THE DISTRICT
27 ATTORNEY OPPORTUNITY TO NOTIFY THE VICTIM AND SHALL SET A RETURN

1 DATE FOR A HEARING ON THE SEALING MOTION NO LATER THAN
2 FORTY-TWO DAYS AFTER RECEIPT OF THE MOTION.

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

18 (e) THE PROVISIONS OF SECTION 24-72-702 (1)(d) TO (1)(g) AND
19 SECTION 24-72-702 (4) APPLY TO THIS SECTION.

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

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

27 (b) WHEN THE MOTION TO SEAL THE CRIMINAL CASE IS FILED IN

1 STATE COURT, the processing fees collected under ~~paragraph (a) of this~~
2 ~~subsection (2)~~ SUBSECTION (2)(a) OF THIS SECTION must be transmitted to
3 the state treasurer and credited to the judicial stabilization cash fund
4 created in section 13-32-101 (6). ~~C.R.S.~~

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

11 **SECTION 4. Act subject to petition - effective date.** This act
12 takes effect September 1, 2017; except that, if a referendum petition is
13 filed pursuant to section 1 (3) of article V of the state constitution against
14 this act or an item, section, or part of this act within the ninety-day period
15 after final adjournment of the general assembly, then the act, item,
16 section, or part will not take effect unless approved by the people at the
17 general election to be held in November 2018 and, in such case, will take
18 effect on the date of the official declaration of the vote thereon by the
19 governor.