

Second Regular Session
Seventy-fourth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 24-0738.01 Michael Dohr x4347

HOUSE BILL 24-1133

HOUSE SPONSORSHIP

Mabrey and Soper,

SENATE SPONSORSHIP

Rodriguez,

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MATTERS RELATED TO ACCESS TO CRIMINAL RECORDS.

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>.)

Under current law, when a person is arrested in a case of mistaken identity, the arresting agency is required to petition the court for an expungement order. The bill allows the defendant in a mistaken identity case to petition for an expungement order if the arresting agency does not file a petition. The defendant is not subject to any fees or costs associated with expunging the record.

A court can grant an attorney access to a sealed record if the defendant in the sealed case provides permission and the attorney is

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters or bold & italic numbers indicate new material to be added to existing law.
Dashes through the words or numbers indicate deletions from existing law.

accessing the record for the sole purpose of providing legal advice to or representing the defendant.

The bill clarifies procedures for automatic sealing.

The bill allows a hearing related to sealing matters to be conducted remotely.

The waiting period for sealing a municipal record without a subsequent conviction is lowered from 3 years to one year and for sealing a municipal record with a single subsequent conviction from 10 years to 3 years.

The bill creates a record sealing procedure for convictions records for when a statutory change legalizes previously prohibited conduct.

On or before January 1, 2025, the state court administrator shall compile a list of certain types of non-conviction criminal justice records (non-conviction records) with dispositions prior to August 2022. The state court administrator shall sort the non-conviction records by judicial district and send the final list to the chief judge of each judicial district.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-701, **amend**
3 (2.5) as follows:

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

6 (2.5) "Conviction" means a criminal judgment of conviction and
7 does not include ~~infractions that constitute civil matters~~ CIVIL
8 INFRACTIONS OR PREVIOUSLY SEALED CONVICTIONS.

9 **SECTION 2.** In Colorado Revised Statutes, 24-72-702, **amend**
10 (1)(b) as follows:

11 **24-72-702. Expungement of arrest records in case of mistaken**
12 **identity - definitions.** (1) (b) No later than ninety days after an
13 investigation by a law enforcement agency finds that a person was
14 arrested as a result of mistaken identity and no charges were filed, the law
15 enforcement agency that made the arrest shall petition the district court
16 in the judicial district where the person was arrested for an expungement

1 order for the arrest and criminal records information made as a result of
2 the mistaken identity, at no cost to the person arrested. IF THE ARRESTING
3 AGENCY FAILS TO SUBMIT A PETITION PURSUANT TO THIS SECTION, A
4 DEFENDANT MAY PETITION THE DISTRICT COURT IN THE JUDICIAL DISTRICT
5 WHERE THE PERSON WAS ARRESTED FOR AN EXPUNGEMENT ORDER FOR
6 THE ARREST AND CRIMINAL RECORDS CREATED AS A RESULT OF THE
7 MISTAKEN IDENTITY. A petition filed pursuant to this subsection (1)(b) is
8 not subject to a filing fee, AND AN ELIGIBLE DEFENDANT FILING FOR
9 EXPUNGEMENT PURSUANT TO THIS SECTION MUST NOT BE CHARGED ANY
10 OTHER FEES OR COSTS ASSOCIATED WITH EXPUNGING THE RECORD.

11 **SECTION 3.** In Colorado Revised Statutes, 24-72-703, **amend**
12 (12)(d)(I); **repeal** (12)(c); and **add** (2)(a)(IX), (2)(a)(X), (2)(a)(XI), and
13 (13) as follows:

14 **24-72-703. Sealing of records - general provisions - order**
15 **applicability - discovery and advisements. (2) Effect of a sealing**
16 **order. (a) (IX) A COURT SHALL ALLOW A PERSON TO ACCESS A SEALED**
17 **CRIMINAL JUSTICE RECORD IF THE PERSON AFFIRMS TO THE COURT, IN**
18 **WRITING OR ELECTRONICALLY, THAT:**

19 (A) THE PERSON IS AN ATTORNEY, OR IS ACTING ON BEHALF OF AN
20 ATTORNEY;

21 (B) THE DEFENDANT IN THE UNDERLYING CRIMINAL CASE HAS
22 GIVEN WRITTEN PERMISSION FOR THE PERSON TO ACCESS THE SEALED
23 RECORD; AND

24 (C) THE PERSON IS ACCESSING THE RECORD FOR THE SOLE PURPOSE
25 OF PROVIDING LEGAL ADVICE TO, OR EVALUATING WHETHER TO ENTER AN
26 APPEARANCE ON BEHALF OF, THE DEFENDANT WHO GAVE PERMISSION FOR
27 THE PERSON TO ACCESS THE RECORD.

1 (X) A LAW ENFORCEMENT AGENCY SHALL RELEASE REDACTED
2 SEALED CRIMINAL JUSTICE RECORDS THAT ARE THE SUBJECT OF
3 DISCOVERY REQUESTS TO PARTIES IN CIVIL LITIGATION.

4 (XI) IF A SEALED CRIMINAL JUSTICE RECORD IS RELEASED
5 PURSUANT TO SUBSECTION (2)(a)(X) OF THIS SECTION, THE COURT SHALL
6 ISSUE A PROTECTIVE ORDER REGARDING THE USE OF THE SEALED CRIMINAL
7 JUSTICE RECORDS.

8 (12) **Exclusions.** (c) ~~Sealing is not available for cases when the~~
9 ~~only charges were as follows:~~

10 ~~(I) A class 1 or 2 misdemeanor traffic offense; or~~

11 ~~(II) A class A or B traffic offense.~~

12 (d) Sealing is not available for:

13 (I) Records pertaining to a deferred judgment and sentence
14 concerning TRAFFIC CONTROL LAWS RELATED TO the holder of a
15 commercial driver's license as defined in section 42-2-402 or the operator
16 of a commercial motor vehicle as defined in section 42-2-402; and

17 (13) **Remote participation.** FOR ANY MOTION FILED TO SEAL
18 CRIMINAL JUSTICE RECORDS:

19 (a) THE COURT SHALL ALLOW THE DEFENDANT, THE PROSECUTION,
20 THE NAMED VICTIM, AND ANY WITNESS TO APPEAR IN PERSON OR
21 REMOTELY BY PHONE OR VIDEO ON A PLATFORM DESIGNATED BY THE
22 COURT AT ANY HEARING OR OTHER COURT PROCEEDING. EITHER PARTY,
23 THE NAMED VICTIM, AND ANY WITNESS MAY ELECT TO CHANGE HOW THE
24 PARTY OR WITNESS INTENDS TO PARTICIPATE BY CONTACTING THE COURT;
25 EXCEPT THAT, IF A PARTY, NAMED VICTIM, OR WITNESS CONTACTS THE
26 COURT WITHIN FORTY-EIGHT HOURS BEFORE THE SCHEDULED
27 APPEARANCE, THE COURT HAS DISCRETION WHETHER TO APPROVE THE

1 PARTY'S OR WITNESS'S REQUESTED CHANGE IN PARTICIPATION.

2 (b) THE COURT SHALL COMPLY WITH ANY FEDERAL OR STATE LAW
3 OR REGULATION, INCLUDING ANY SUPREME COURT DIRECTIVE OR POLICY,
4 REGARDING THE PROVISION OF ACCOMMODATIONS FOR PEOPLE WITH A
5 DISABILITY OR FOR PEOPLE WITH LIMITED ENGLISH PROFICIENCY DURING
6 ANY PROCEEDING, REGARDLESS OF WHETHER THE PROCEEDING IS
7 CONDUCTED IN PERSON OR REMOTELY BY PHONE OR VIDEO ON A
8 PLATFORM DESIGNATED BY THE COURT.

9 (c) IN THE EVENT A PARTY IS DISCONNECTED OR THERE IS A
10 TECHNOLOGY FAILURE, THE COURT SHALL MAKE ALL REASONABLE
11 EFFORTS TO CONTACT THE PARTY AND SHALL ALLOW THE PARTY
12 REASONABLE TIME TO REESTABLISH CONNECTION WITH THE COURT. IF THE
13 PARTY IS UNABLE TO REESTABLISH CONNECTION, THE COURT SHALL
14 RESCHEDULE THE HEARING, TO BE HELD IN PERSON, FOR THE FIRST
15 AVAILABLE DATE AFTER THE DATE OF THE ORIGINALLY SCHEDULED
16 HEARING, BUT NO LATER THAN ONE WEEK AFTER THE ORIGINALLY
17 SCHEDULED HEARING, TO THE EXTENT PRACTICABLE.

18 **SECTION 4.** In Colorado Revised Statutes, 24-72-704, **add** (1.5)
19 as follows:

20 **24-72-704. Sealing of arrest records when no charges filed -**
21 **automatic sealing.** (1.5) (a) ON ITS OWN MOTION, THE COURT SHALL
22 ORDER THE DEFENDANT'S CRIMINAL JUSTICE RECORDS SEALED WHEN THE
23 DISTRICT ATTORNEY NOTIFIES THE COURT THAT A PERSON IN INTEREST
24 MEETS ONE OF THE CONDITIONS OF SUBSECTION (1) OF THIS SECTION TO
25 FACILITATE SEALING OF THE RECORDS HELD BY THE COURT.

26 (b) THE COURT SHALL NOT REQUIRE A WRITTEN MOTION OR ANY
27 OTHER WRITTEN PLEADINGS FOR SEALING PURSUANT TO THIS SECTION. THE

1 COURT SHALL ENTER AN ORDER SEALING RECORDS PURSUANT TO THIS
2 SUBSECTION (1.5) AT THE TIME OF NOTICE AND SHALL SERVE THE SEALING
3 ORDER PURSUANT TO SECTION 24-72-703 (8) NO LATER THAN
4 TWENTY-EIGHT DAYS AFTER THE DATE OF SEALING.

5 (c) IF THE AUTOMATIC SEALING OF A CRIMINAL RECORD DOES NOT
6 OCCUR, THE DEFENDANT MAY FILE A MOTION TO SEAL THE CRIMINAL CASE
7 AT ANY TIME SUBSEQUENT TO THE DISTRICT ATTORNEY'S NOTICE THROUGH
8 THE FILING OF A WRITTEN MOTION PURSUANT TO SUBSECTION (1) OF THIS
9 SECTION. THE COURT SHALL NOT CHARGE OR ASSESS THE DEFENDANT ANY
10 FEES OR COSTS ASSOCIATED WITH FILING A MOTION PURSUANT TO THIS
11 SUBSECTION (1.5)(c).

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

14 **SECTION 5.** In Colorado Revised Statutes, 24-72-705, **repeal**
15 (1)(d); and **add** (1)(g) and (3) as follows:

16 **24-72-705. Sealing criminal justice records other than**
17 **convictions - simplified process - applicability.** (1)(d) ~~Notwithstanding~~
18 ~~the provision of subsection (1)(c) of this section, if the defendant is~~
19 ~~acquitted or if the case dismissed is a crime enumerated in section~~
20 ~~24-4.1-302 (1) in which notice of a hearing on a motion to seal is required~~
21 ~~pursuant to section 24-4.1-303 (11)(b.7), the court shall allow the district~~
22 ~~attorney the opportunity to inform the victim that the record will be sealed~~
23 ~~and shall set a return date for the sealing motion no later than forty-two~~
24 ~~days after receipt of the motion.~~

25 (g) CHARGES THAT ARE DISMISSED PURSUANT TO SECTION
26 16-8.5-116 ARE NOT ELIGIBLE FOR SEALING.

27 (3) NOTWITHSTANDING THE PROVISIONS OF ANY SECTION TO THE

1 CONTRARY, WHEN A DEFENDANT HAS A NON-CONVICTION RECORD THAT
2 IS INELIGIBLE FOR SEALING BECAUSE THE DEFENDANT WAS CONVICTED OF
3 A TRAFFIC OFFENSE IN THE SAME CASE, THE DEFENDANT MAY FILE A
4 MOTION TO SEAL THE RECORD THROUGH THE PROCEDURES SET FORTH IN
5 SUBSECTION (2) OF THIS SECTION.

6 **SECTION 6.** In Colorado Revised Statutes, 24-72-706, **amend**
7 (2)(a)(VI)(J) and (2)(b) as follows:

8 **24-72-706. Sealing of criminal conviction and criminal justice**
9 **records - processing fee.** (2) (a) The provisions of this section do not
10 apply to records pertaining to:

11 (VI) A conviction that is subject to one or more of the following
12 provisions:

13 (J) Sentencing for an offense classified as a class 1, 2, or 3 felony
14 or a level 1 drug felony pursuant to any section of title 18, except a class
15 3 felony in violation of section 18-18-106 (8)(a)(II)(B) as it existed prior
16 to July 1, 1992, OR a class 3 felony in violation of section 18-18-406
17 (8)(a)(II)(B) as it existed prior to August 11, 2010; ~~or a class 3 felony in~~
18 ~~violation of section 18-18-406 (6)(a)(II)(B) as it existed prior to October~~
19 ~~1, 2013;~~

20 (b) Notwithstanding the provisions of this section, a misdemeanor
21 OR PETTY offense ineligible pursuant to ~~the provisions of this section or~~
22 subsection (2)(a) of this section is eligible for sealing pursuant to this
23 section if the district attorney consents to the sealing or if the court finds,
24 by clear and convincing evidence, that the petitioner's need for sealing of
25 the record is significant and substantial, the passage of time is such that
26 the petitioner is no longer a threat to public safety, and the public
27 disclosure of the record is no longer necessary to protect or inform the

1 public.

2 **SECTION 7.** In Colorado Revised Statutes, 24-72-708, **amend**
3 (3) and (5)(b) as follows:

4 **24-72-708. Sealing of criminal conviction records information**
5 **for municipal offenses for convictions. (3) Timing for filing motions.**

6 (a) A motion filed pursuant to subsection (1) of this section may be filed
7 ~~three years~~ ONE YEAR after the later of the date of the final disposition of
8 all criminal proceedings against the defendant or the release of the
9 defendant from supervision concerning a criminal conviction.

10 (b) A motion filed pursuant to subsection (2) of this section may
11 be filed ~~ten~~ THREE years after the date of the final disposition of all
12 criminal proceedings against the defendant for the subsequent criminal
13 case or ~~ten~~ THREE years after the date of the defendant's release from
14 supervision for the subsequent criminal case, whichever is later.

15 (5) (b) If the court determines that the petition is sufficient on its
16 face and that no other grounds exist at that time for the court to deny the
17 petition pursuant to this section, the court shall grant the motion unless
18 the prosecution files an objection. If the prosecution files a written
19 objection, the court shall set a date within ~~forty-two~~ TWENTY-EIGHT days
20 after the filing of the motion for a hearing and the court shall notify the
21 prosecution, the municipal police department or local law enforcement
22 agency, and any other person or agency identified by the defendant.

23 **SECTION 8.** In Colorado Revised Statutes, 24-72-709, **amend**
24 (1)(a) as follows:

25 **24-72-709. Sealing of criminal conviction records information**
26 **for multiple conviction records. (1) (a)** Subject to ~~the provisions of~~
27 subsection (5) of this section, a defendant with multiple conviction

1 records in the state may ~~petition~~ MOTION the court of the jurisdiction
2 where the conviction record or records pertaining to the defendant are
3 located for the sealing of the conviction records, except basic identifying
4 information, if the record or records are not eligible for sealing pursuant
5 to any other section in this part 7 because of an intervening conviction
6 and if the ~~petition~~ MOTION is filed within the time frame described in
7 subsection (2) of this section and proper notice is given to the district
8 attorney. If the multiple conviction records are in different jurisdictions,
9 the defendant shall file a ~~petition~~ MOTION in each jurisdiction with a
10 conviction record that includes a copy of each ~~petition~~ MOTION filed in the
11 other jurisdictions and provide notice of the ~~petition~~ MOTION to each
12 district attorney. IF THE CONVICTION RECORDS ARE IN THE SAME
13 JURISDICTION, THE DEFENDANT MAY FILE A MOTION TO SEAL ALL
14 CONVICTION RECORDS IN A SINGLE CASE.

15 **SECTION 9.** In Colorado Revised Statutes, **add 24-72-711** as
16 follows:

17 **24-72-711. Record sealing - change in the law - conduct no**
18 **longer prohibited.** (1) AT ANY TIME AFTER A STATUTORY CHANGE
19 LEGALIZES PREVIOUSLY PROHIBITED CONDUCT, A DEFENDANT MAY FILE A
20 MOTION IN ANY CASE IN WHICH A CONVICTION RECORD EXISTS PERTAINING
21 TO THE DEFENDANT'S CONVICTION FOR AN OFFENSE THAT IS NO LONGER
22 PROHIBITED BY STATUTE AND PROVIDE NOTICE OF THE MOTION TO THE
23 DISTRICT ATTORNEY.

24 (2) A DEFENDANT WHO MAKES A MOTION TO HAVE THE
25 DEFENDANT'S CRIMINAL RECORDS SEALED PURSUANT TO THIS SECTION IS
26 NOT REQUIRED TO PAY ANY FEES OR COSTS ASSOCIATED WITH SEALING THE
27 RECORD.

1 (3) THE DISTRICT ATTORNEY MAY ONLY OBJECT TO THE SEALING
2 OF A RECORD PURSUANT TO THIS SECTION IF THE DISTRICT ATTORNEY HAS
3 A GOOD-FAITH BELIEF THAT THE OFFENSE THE DEFENDANT IS SEEKING TO
4 SEAL IS ILLEGAL AT THE TIME THE MOTION TO SEAL IS MADE. IF THE
5 DISTRICT ATTORNEY DOES NOT OBJECT WITHIN FOURTEEN DAYS AFTER THE
6 DATE OF THE MOTION TO SEAL THE RECORD, THE COURT SHALL ORDER THE
7 RECORD SEALED REGARDLESS OF OTHER CONVICTIONS ON THE
8 DEFENDANT'S RECORD.

9 **SECTION 10.** In Colorado Revised Statutes, 13-3-117, **add** (5)
10 as follows:

11 **13-3-117. State court administrator - automatic conviction**
12 **sealing.** (5) (a) ON OR BEFORE JANUARY 1, 2025, THE STATE COURT
13 ADMINISTRATOR SHALL COMPILE A LIST OF ALL CRIMINAL JUSTICE
14 RECORDS OF DEFERRED JUDGMENTS, ACQUITTALS, AND DIVERSION CASES
15 PURSUANT TO SECTION 24-72-705 (1)(a) WITH DISPOSITIONS PRIOR TO
16 AUGUST 2022. THE STATE COURT ADMINISTRATOR SHALL SORT THOSE
17 CRIMINAL JUSTICE RECORDS BY JUDICIAL DISTRICT AND SEND THE FINAL
18 LIST TO THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT.

19 (b) (I) THE STATE COURT ADMINISTRATOR SHALL SEND THE FINAL
20 LIST COMPILED PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION TO THE
21 CHIEF JUDGE FOR THE JUDICIAL DISTRICT. THE COURTS OF THAT JUDICIAL
22 DISTRICT SHALL ENTER SEALING ORDERS BASED ON THE LIST RECEIVED
23 WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE FINAL LIST FROM THE
24 STATE COURT ADMINISTRATOR.

25 (II) THE DISTRICT COURT SHALL SEND A COPY OF THE SEALING
26 ORDER TO THE DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED THE CASE,
27 AND UPON RECEIPT OF THE ORDER THE DISTRICT ATTORNEY'S OFFICE SHALL

1 SEAL THE RECORDS HELD BY IT. THE COURT SHALL ALSO SEND A COPY TO
2 THE STATE COURT ADMINISTRATOR FOR PURPOSES OF SUBSECTION
3 (5)(b)(III) OF THIS SECTION.

4 (III) THE STATE COURT ADMINISTRATOR SHALL ELECTRONICALLY
5 SEND ALL ORDERS SEALING RECORDS PURSUANT TO THIS SUBSECTION
6 (5)(b) TO THE COLORADO BUREAU OF INVESTIGATION USING AN
7 INFORMATION-SHARING DATA TRANSFER. UPON RECEIPT OF THE ORDERS,
8 THE COLORADO BUREAU OF INVESTIGATION SHALL SEAL ALL RECORDS
9 HELD BY THE ORDERS.

10 (IV) THE DEFENDANT MAY OBTAIN A COPY OF THE SEALING ORDER
11 PURSUANT TO SECTION 24-72-703 (2)(c) AND SERVE THE SEALING ORDER
12 ON ANY CUSTODIAN OF THE RECORDS PURSUANT TO SECTION 24-72-703
13 (8), INCLUDING THE LAW ENFORCEMENT AGENCY THAT INVESTIGATED THE
14 CASE.

15 **SECTION 11.** In Colorado Revised Statutes, 16-8.5-116, **repeal**
16 (12) as follows:

17 **16-8.5-116. Certification - reviews - termination of**
18 **proceedings - rules.** (12) ~~If charges against a defendant are dismissed~~
19 ~~pursuant to this section, such charges are not eligible for sealing pursuant~~
20 ~~to section 24-72-705.~~

21 **SECTION 12. Safety clause.** The general assembly finds,
22 determines, and declares that this act is necessary for the immediate
23 preservation of the public peace, health, or safety or for appropriations for
24 the support and maintenance of the departments of the state and state
25 institutions.