

§ 16-23-105. Expungement.

Colorado Statutes

Title 16. CRIMINAL PROCEEDINGS

OFFENDERS - REGISTRATION

Article 23. DNA Crime Prevention and Exoneration of the Innocent Act

Current through 2018 Legislative Session

§ 16-23-105. Expungement

- (1) Except as provided in subsection (7) of this section, a person whose biological substance sample is collected pursuant to section 16-23-103 qualifies for expungement if:
 - (a) In the case of a sample collected based upon the filing of a charge or based upon a final court order, each felony charge stemming from the charges has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense;
 - (b) In the case of a sample collected based upon an arrest:
 - (I) A felony charge was not filed within ninety days after the arrest; or
 - (II) Each felony charge stemming from the arrest has, by final court order, been dismissed, resulted in an acquittal, or resulted in a conviction for an offense other than a felony offense.
- (2) A person who qualifies for expungement under subsection (1) of this section may submit a written request for expungement to the Colorado bureau of investigation. The request shall include the items listed in this subsection (2) and may include any additional information that may assist the bureau in locating the records of arrest or charges or the biological substance sample or testing results. The following information shall be included in the submitted request:
 - (a) The person's name, date of birth, and mailing address;
 - (b) The name of the agency that collected the biological substance sample;
 - (c) The date of arrest or other date when the sample was taken;
 - (d) Whether any charges were filed stemming from the arrest for which a biological substance sample was collected, the identity of the court, and the case number of each case in which charges were filed; and

- (e) A declaration that, to the best of the person's knowledge, he or she qualifies for expungement.
- (3) Upon receipt of a request satisfying the requirements of subsection (2) of this section, the Colorado bureau of investigation shall promptly submit a written inquiry to the district attorney in the jurisdiction in which the person's biological substance sample was collected concerning the outcome of the arrest or charges.
- (4) Within ninety days after receiving the request submitted pursuant to subsection (2) of this section, the Colorado bureau of investigation shall destroy the biological substance sample collected pursuant to section 16-23-103 and expunge the results of the testing of the sample from the federal combined DNA index system and any state index system, unless the bureau receives written notification from the applicable district attorney that the person does not qualify for expungement and the reasons that the person does not qualify.
- (5) Within thirty days after receiving a notice from a district attorney pursuant to subsection (4) of this section, or at the end of the ninety-day period identified in subsection (4) of this section, whichever is earlier, the Colorado bureau of investigation shall send notification by first class mail to the person arrested or charged, either stating that the bureau has destroyed the biological substance sample and expunged the results of the testing of the sample or stating why the bureau has not destroyed the sample and expunged the test results.
- (6) A data bank or database match shall not be admitted as evidence against a person in a criminal prosecution and shall not be used as a basis to identify a person if the match is:
 - (a) Derived from a biological substance sample that is required to be destroyed or expunged pursuant to this section; and
 - (b) Obtained after the required date of destruction or expungement.
- (7) This section shall not apply if the person has been arrested for, charged with, or convicted of some other offense on the basis of which a biological substance sample was or could have been collected under state statute.
- (8) For purposes of this section, a court order shall not be deemed final if time remains for an appeal or application for discretionary review with respect to the order.

Cite as C.R.S. § 16-23-105

History. L. 2009: Entire article added, (SB 09-241), ch. 295, p. 1575 § 1, effective September 30, 2010. L. 2011: (1)(a) amended, (HB 11-1051), ch. 17, p. 45, §1, effective March 11.