

7. CRIMINAL JUSTICE RECORD SEALING [Details]

This part 7 was added in 2014. It was repealed and reenacted in 2019, resulting in the addition, relocation, or elimination of sections as well as subject matter.

§ 24-72-701. Definitions

As used in this part 7, unless the context otherwise requires:

- (1) "Arrest and criminal records information" has the same meaning as in section 24-72-302.
- (2) "Basic identification information" has the same meaning as in section 24-72-302.
- (3) "Conviction records" means arrest and criminal records information and any records pertaining to a judgment of conviction.
- (4) "Criminal justice agencies" has the same meaning as in section 24-72-302.
- (5) "Custodian" has the same meaning as in section 24-72-302.
- (6) "Official actions" has the same meaning as in section 24-72-302.
- (7) "Person in interest" has the same meaning as in section 24-72-302.
- (8) "Private custodian" has the same meaning as in section 24-72-302.
- (9) "Victim" means any natural person against whom any crime has been perpetrated or attempted, unless the person is accountable for the crime or a crime arising from the same conduct or plan as the crime is defined under the laws of this state or of the United States, or, if such person is deceased or incapacitated, the person's spouse, parent, legal guardian, child, sibling, grandparent, grandchild, significant other, or other lawful representative.

(Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Amended by 2017 Ch. 335, §1, eff. 9/1/2017. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1377, § 3, effective August 1. L. 2017: (9) added, (HB 17-1208), ch. 335, p. 1790, § 1, effective September 1.)

The provisions of this section are similar to provisions of several former sections as they existed prior to 2014.

§ 24-72-702. Expungement of arrest records in case of mistaken identity - definitions

(1)

(a) Notwithstanding any other provision of law, a court shall expunge the arrest and criminal records information of a person who was arrested as a result of mistaken identity and who did not have charges filed against him or her.

(b) No later than ninety days after an investigation by a law enforcement agency finds that a person was arrested as a result of mistaken identity and no charges were filed, the law enforcement agency that made the arrest shall petition the district court in the judicial district where the person was arrested for an expungement order for the arrest and criminal records information made as a result of the mistaken identity, at no cost to the person arrested. A petition filed pursuant to this subsection (1)(b) is not subject to a filing fee.

(c) No later than ninety days after receiving the petition, the court shall order the expungement of the arrest and criminal records information and all other administrative records of the law enforcement agency relating to the person's arrest as a result of mistaken identity.

(2) The courts shall direct any order entered pursuant to subsection (1)(c) of this section to every custodian who may have custody of any part of the arrest and criminal records information that is the subject of the order. When a court enters an order expunging criminal records pursuant to subsection (1)(c) of this section, the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of the order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to the order from its database. Thereafter, the court may issue an order sealing the civil case in which the records were sealed.

(3) Upon the entry of an order to expunge the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry into the matter, that no such records exist with respect to the person.

(4) 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 expunged records. An applicant need not, in answer to any

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question concerning arrest and criminal records information that has been expunged, include a reference to or information concerning the expunged 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 expunged.

(5) For purposes of this section:

(a) "Law enforcement agency" means the Colorado state patrol or the agency of a state or local government authorized to enforce the laws of Colorado.

(b) "Mistaken identity" means the misidentification by a witness or law enforcement, confusion on the part of a witness or law enforcement as to the identity of the person who committed the crime, misinformation provided to law enforcement as to the identity of the person who committed the crime, or some other mistake on the part of a witness or law enforcement as to the identity of the person who committed the crime.

(Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Amended by 2018 Ch. 135, §3, eff. 8/8/2018. Amended by 2017 Ch. 335, §2, eff. 9/1/2017. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1378, § 3, effective August 1. L. 2017: IP(1)(a)(II) and (1)(a)(II)(B) amended and (1)(f.5) added, (HB 17-1208), ch. 335, p. 1790, § 2, effective September 1. L. 2018: (1)(b)(II)(C) added, (HB 18-1078), ch. 135, p. 890, § 3, effective August 8.)

§ 24-72-703. Sealing of arrest and criminal records - general provisions - order applicability - discovery and advisements

(1) **Applicability.** The provisions of this section shall apply to the sealing of arrest and criminal records pursuant to sections 24-72-704 to 24-72-710.

(2) **Effect of a sealing order.**

(a)

(I) An order sealing arrest or other criminal records does not deny access to the criminal records of a petitioner or defendant by any court, law enforcement agency, criminal justice agency, prosecuting attorney, or party or agency required by law to conduct a criminal history record check on an individual.

(II) An order sealing conviction records does not vacate a conviction.

(III) A conviction sealed pursuant to this article 72 may be used by a criminal justice agency, law enforcement agency, court, or prosecuting attorney for any lawful purpose relating to the investigation or prosecution of any case, including but not limited to any subsequent case that is filed against the petitioner or defendant, or for any other lawful purpose within the scope of his, her, or its duties. A party or agency required by law to conduct a criminal history record check is authorized to use any sealed conviction for the lawful purpose for which the criminal history record check is required by law.

(IV) Criminal justice information and criminal justice records in the possession of a criminal justice agency may be shared with any other criminal justice agency when an inquiry concerning the arrest and criminal justice information or records is made.

(V) If a defendant is convicted of a new criminal offense after an order sealing conviction records is entered, the court shall order the conviction records to be unsealed.

(b) Except as otherwise provided in subsection (2)(a)(I) of this section, upon the entry of an order to seal the criminal records, the defendant and all criminal justice agencies may properly reply, upon an inquiry into the matter, that public criminal records do not exist with respect to the petitioner or defendant.

(c) Except as otherwise provided in subsection (2)(a)(I) of this section, inspection of the records included in an order sealing criminal records may

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thereafter be permitted by the court only upon petition by the petitioner or defendant.

(d)

(I) Except as otherwise provided in subsection (2)(a)(I) of this section, employers, state and local government agencies, officials, landlords, and employees shall not require an applicant to disclose any information contained in sealed conviction records in any application or interview or in any other way. An applicant does not need to include a reference to or information concerning the sealed conviction records in answer to any question concerning conviction records that have been sealed and may state that the applicant has not been criminally convicted. An application may not be denied solely because of the applicant's refusal to disclose conviction records that have been sealed.

(II) Subsection (2)(d)(I) of this section does not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction that 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 that justifies his or her refusal to answer any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

(III) Notwithstanding the provisions of subsection (2)(d)(I) of this section, the department of education shall require a licensed educator or an applicant for an educator's license who files a petition to seal a criminal record to notify the department of education of the pending petition to seal. The department of education has the right to inquire into the facts of the criminal offense for which the petition to seal is pending. The educator or applicant has no right to privacy or privilege that justifies his or her refusal to answer any questions of the department of education concerning the arrest and criminal records information contained in the pending petition to seal.

(3) A person may only file a petition with the court for sealing of each case once every twelve-month period, unless otherwise provided by the court.

(4) Nothing in this part 7 regarding sealing of records authorizes the physical destruction of any conviction records.

(5)

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(a) Inspection of the court records included in an order sealing criminal records may be permitted by the court only upon petition by the petitioner or the defendant who is the subject of the records or by the prosecuting attorney and only for those purposes named in the petition. This petition to inspect the criminal justice records must be filed by the petitioning party within the case in which the sealing order was entered.

(b) Notwithstanding the provisions of subsections (2)(b) and (2)(c) of this section, the prosecuting attorney or the law enforcement agency may release to the victim in the sealed case copies of police reports or any protection orders issued in the sealed case if the victim demonstrates to the prosecuting attorney or law enforcement agency a need for the reports or court orders for a lawful purpose. The prosecuting attorney, including staff of the prosecuting attorney's office or a victim or witness assistance program, or the staff of a law enforcement agency or law enforcement victim assistance program, may discuss the sealed case, the results of the sealing proceedings, and information related to any victim services available to the victim.

(c) Notwithstanding any other provision of this section, any member of the public may petition the court to unseal any court file of a criminal conviction that has previously been sealed upon a showing that circumstances have come into existence since the original sealing and, as a result, the public interest in disclosure now outweighs the defendant's interest in privacy.

(6) For the purpose of protecting the author of any correspondence that becomes a part of criminal justice records, the court having jurisdiction in the judicial district in which the criminal justice records are located may, in its discretion, with or without a hearing, enter an order to seal any information, including but not limited to basic identification information contained in the correspondence that is part of the record in the criminal case. However, the court may, in its discretion, enter an order that allows the disclosure of sealed information to defense counsel or, if the defendant is not represented by counsel, to the defendant.

(7) Rules of discovery - rules of evidence - witness testimony. Court orders sealing records of official actions pursuant to this part 7 do not limit the operations of:

(a) The rules of discovery or the rules of evidence promulgated by the supreme court of Colorado or any other state or federal court;

(b) The provisions of section 13-90-101 concerning witness testimony.

(8) Service of sealing order. The court shall direct a sealing order entered pursuant to this part 7 to each custodian who may have custody of

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any part of the conviction records that are the subject of the order.

Whenever a court enters an order sealing conviction records, the defendant shall provide the Colorado bureau of investigation and each custodian of the conviction records with a copy of the order. The petitioner shall provide a private custodian with a copy of the order and send the private custodian an electronic notification of the order. Each private custodian that receives a copy of the order from the petitioner shall remove the records that are subject to an order from its database. The defendant shall pay to the bureau any costs related to the sealing of his or her criminal conviction records in the custody of the bureau. Thereafter, the defendant may request and the court may grant an order sealing the civil case in which the conviction records were sealed.

(9) Advisements.

(a) Whenever a defendant is sentenced following a conviction for an offense described in sections 24-72-706 to 24-72-708, the court shall provide him or her with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(b) In addition to, and not in lieu of, the requirement described in subsection (9)(a) of this section:

(I) If a defendant is sentenced to probation following a conviction for an offense described in sections 24-72-706 to 24-72-708, the probation department, upon the termination of the defendant's probation, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section; or

(II) If a defendant is released on parole following a conviction for an offense described in sections 24-72-706 to 24-72-708, the defendant's parole officer, upon the termination of the defendant's parole, shall provide the defendant with a written advisement of his or her rights concerning the sealing of his or her conviction records pursuant to this section if he or she complies with the applicable provisions of this section.

(10) If the person in interest has successfully completed a veterans treatment program established pursuant to section 13-5-144 in the case that is the subject of the petition to seal, the court shall consider such factor favorably in determining whether to issue an order to seal records pursuant to this section.

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(10.5) If the person in interest has entered into or successfully completed a substance use disorder treatment program licensed pursuant to section 27-80-205 in the case that is the subject of the petition to seal, the court shall consider such factor favorably in determining whether to issue an order to seal records pursuant to this section.

(11) A defendant shall not be required to waive his or her right to file a motion to seal pursuant to the provisions of this section as a condition of a plea agreement in any case.

(12) Exclusions.

(a)

(I) Notwithstanding any provision in this part 7 to the contrary, in regard to any conviction of the defendant resulting from a single case in which the defendant is convicted of more than one offense, records of the conviction may be sealed pursuant to the provisions of this part 7 only if the records of every conviction of the defendant resulting from that case may be sealed pursuant to the provisions of this part 7.

(II) If a criminal case is dismissed or if a criminal offense is not charged due to a plea agreement in a separate case, the records are eligible for sealing at such time as the criminal case in which the conviction was entered is eligible for sealing pursuant to the provisions of this part 7.

(b) Conviction records must not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the motion to seal, unless the court that entered the order has vacated the order.

(c) Sealing is not available for cases when the only charges were as follows:

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

(II) A class A or B traffic offense.

(d) Sealing is not available for:

(I) Records pertaining to a deferred judgment and sentence concerning the holder of a commercial driver's license as defined in section 42-2-402 or the operator of a commercial motor vehicle as defined in section 42-2-402; and

(II) Records pertaining to a deferred judgment and sentence for a felony offense for the factual basis involved in unlawful sexual behavior as defined in section 16-22-102(9).

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(Amended by 2021 Ch. 455, §5, eff. 9/7/2021. Amended by 2020 Ch. 288, §9, eff. 9/14/2020. Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Amended by 2018 Ch. 274, §55, eff. 5/29/2018. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1382, § 3, effective August 1. L. 2018: (1) amended, (HB 18-1375), ch. 274, p. 1712, § 55, effective May 29.)

2021 Ch. 455, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

**§ 24-72-704. Sealing of arrest records when no charges filed -
automatic sealing**

(1)

(a) Any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to the person in interest is located for the sealing of all of the records, except basic identification information, if the records are a record of official actions involving a criminal offense for which the person in interest:

(I) Completed a diversion agreement pursuant to section 18-1.3-101 and no criminal charges were ever filed;

(II) Was not charged and the statute of limitations for the offense for which the person was arrested that has the longest statute of limitations has run;
or

(III) Was not charged and the statute of limitations has not run but the person is no longer being investigated by law enforcement for commission of the offense.

(b) Any petition to seal criminal records shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed.

(c)

(I) Upon the filing of a petition, the court shall review the petition and determine whether the petition is sufficient on its face. If the court determines that the petition on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the petition, the petitioner is not entitled to relief pursuant to this section, the court shall enter an order denying the petition and mail a copy of the order to the petitioner or, as permitted, serve the order pursuant to Colorado supreme court rules. The court's order must specify the reasons for the denial of the petition.

(II) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition pursuant to this section, the court shall set a date for a hearing at least thirty-five days after the determination and notify the prosecuting attorney, the arresting agency, and any other person or agency identified by the petitioner of the hearing date. If no objection is received by the court seven days prior to the hearing date, the court shall vacate the hearing and order

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such records, except for basic identification information, to be sealed. If an objection is filed and the court determines at a hearing or otherwise that the objection provides facts that make the petitioner ineligible for sealing of the arrest records, the court shall deny the petition and provide a copy of the order to the petitioner. The court's order must specify the reasons for the denial of the petition. If the objection does not provide facts that make the petitioner ineligible for sealing of the arrest records, the court shall order such records, except basic identification information, to be sealed.

(d) Inspection of the records included in an order sealing criminal records may be permitted by the court only upon petition by the person who is the subject of the records or by the prosecuting attorney and only for those purposes named in the petition.

(2)

(a) For arrests on or after January 1, 2022, the Colorado bureau of investigation in the department of public safety shall automatically seal an arrest record that is in its custody and control of a person when no criminal charges have been filed within one year of the date of the person's arrest. If the Colorado bureau of investigation does not receive documentation of the filing of criminal charges matching arrest records in its custody and control from a court or another state or local agency or office within one year of the date of arrest, the bureau shall seal the arrest records. The Colorado bureau of investigation is not required to conduct any independent investigation of whether criminal charges have been filed and is not required to seal any arrest records not in its custody and control. An arrest record eligible for sealing pursuant to this subsection (2)(a) must be sealed within sixty days after the year has passed since the person's arrest date. If the Colorado bureau of investigation receives notice of filed charges after it sealed the record, the bureau shall immediately unseal the record.

(b)

(I) For arrests without a conviction after January 1, 2019, but before January 1, 2022, the Colorado bureau of investigation shall automatically seal an arrest record that is in its custody and control of a person when no criminal charges have been filed:

(A) Within three years after the date of arrest for a felony offense for which the statute of limitations is three years; or

(B) Within eighteen months after the date of arrest for a misdemeanor offense, a misdemeanor traffic offense, a petty offense, a municipal ordinance violation for which the statute of limitations is eighteen months

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or less, or if there is no indication of the classification of the crime in the arrest data.

(II) If the Colorado bureau of investigation does not receive documentation from a court or another state or local agency or office that criminal charges have been filed within the time periods provided in subsection (2)(b)(I) of this section, the bureau shall seal the arrest records in its custody and control. The Colorado bureau of investigation is not required to conduct any independent investigation of whether criminal charges have been filed and is not required to seal any arrest records not in its custody and control. If the Colorado bureau of investigation receives notice of filed charges after it sealed the record, the bureau shall immediately unseal the record.

(III) This subsection (2)(b) only applies to criminal arrest records that the Colorado bureau of investigation has custody and control over in an electronic format.

(IV)

(A) For arrest records with no conviction that are from 2013 to 2018, the Colorado bureau of investigation shall seal the records by January 1, 2023.

(B) For arrest records with no conviction that are from 2008 to 2012, the Colorado bureau of investigation shall seal the records by January 1, 2024.

(C) For arrest records with no conviction that are from 2003 to 2007, the Colorado bureau of investigation shall seal the records by January 1, 2025.

(D) For arrest records with no conviction that are from 1997 to 2002, the Colorado bureau of investigation shall seal the records by January 1, 2026.

(E) For any other arrest records with no conviction, the Colorado bureau of investigation shall seal the records by January 1, 2027.

(V) Arrest records for a felony offense with a statute of limitations of more than three years or with no statute of limitations pursuant to section 16-5-401 are not eligible for sealing under this subsection (2).

(3) Notwithstanding subsection (2) of this section, the Colorado bureau of investigation shall develop a process to allow an approved treatment provider providing treatment pursuant to section 16-11.7-103 (4) or 16-11.8-103 (4) access to sealed arrest records. A treatment provider shall not use records accessed pursuant to this subsection (3) for any other purpose.

(4) The provisions of section 24-72-703 (2) apply to an arrest record sealed pursuant to this section.

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(5) Sealing of arrest records under this section does not impair the ability of the department of education to access and use sealed records in connection with background checks, investigations, and disciplinary actions conducted under article 60.5 of title 22.

(Amended by 2021 Ch. 455, §6, eff. 9/7/2021. Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Amended by 2018 Ch. 135, §4, eff. 8/8/2018. Amended by 2017 Ch. 382, §2, eff. 8/9/2017. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1385, § 3, effective August 1. L. 2017: (2)(b)(III) amended, (HB 17-1360), ch. 382, p. 1989, § 2, effective August 9. L. 2018: (1)(c) amended, (HB 18-1078), ch. 135, p. 890, § 4, effective August 8.)

2021 Ch. 455, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

ANNOTATION

Law reviews. For article, "Punitive Damages in Wrongful Discharge Cases", see 15 Colo. Law. 658 (1986). For article, "Sealing Criminal Records in Colorado", see 21 Colo. Law. 247 (1992).

Annotator's note. The following annotations include cases decided under former provisions similar to this section.

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).

Because this section does not resolve whether successive sealing actions are permissible, the common law doctrine of claim preclusion applies. *F.M. v. People*, 298 P.3d 991 (Colo. App. 2011).

The court must balance the competing interests in determining whether criminal records should be sealed, and its decision in this regard may not be overturned on appeal absent an abuse of that discretion. *In re T.L.M.*, 39 P.3d 1239 (Colo. App. 2001).

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Arrest and criminal records should not be sealed when the underlying case is not completely dismissed as contemplated in subsection (1)(a)(I). *Warren v. People*, 192 P.3d 477 (Colo. App. 2008).

A case that is dismissed with prejudice is not "completely dismissed". *Warren v. People*, 192 P.3d 477 (Colo. App. 2008).

When determining if case falls under the exception in subsection (3)(c), a guilty plea to an offense that involved sexual behavior constitutes a "conviction", even if conviction was subsequently dismissed under a deferred judgment. *M.T. v. People*, 275 P.3d 661 (Colo. App. 2010), *aff'd*, 2012 CO 11, 269 P.3d 1219.

Exception for crimes involving unlawful sexual behavior applies to convictions that have been subsequently dismissed under a deferred judgment. Text of statute suggests that records do not have to pertain to only extant convictions; such a construction is necessary to avoid rendering exception meaningless; and legislative intent was that exception should apply to records of all convictions involving unlawful sexual behavior, regardless of whether conviction was extant. *M.T. v. People*, 275 P.3d 661 (Colo. App. 2010), *aff'd*, 2012 CO 11, 269 P.3d 1219.

Exception for crimes involving alcohol-related driving offenses applies to convictions that have been subsequently dismissed under a deferred judgment. *In re Harte*, 2012 COA 183, 337 P.3d 1232.

Since this section concerns the sealing of criminal records and juvenile delinquency proceedings are noncriminal in nature, the trial court should have proceeded under the expungement provisions set forth in §19-1-306 when considering a petition to seal arrest and criminal records relating to a juvenile delinquency case. *C.B. v. People*, 122 P.3d 1065 (Colo. App. 2005).

Once the court determines that arrest records and criminal justice information should be sealed, subsection (1)(c) requires the order to be directed to every custodian having custody of any of the records to be sealed. *In re T.L.M.*, 39 P.3d 1239 (Colo. App. 2001).

No irreconcilable conflict or inconsistency between the sealing provisions of this section and §19-3-313(7)(a) and (9). Because they deal with the same subject, all of these provisions should be given effect. *In re T.L.M.*, 39 P.3d 1239 (Colo. App. 2001) (decided before the 2004 repeal of §19-3-313).

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There is no basis under either statutory scheme for exempting criminal records held by the Boulder county department of social services from the application of the sealing provisions of this section. Rather, the provisions apply to the police reports in the possession of the Boulder county department of social services, but do not apply to its own investigative records or to the remainder of its files. In re T.L.M., 39 P.3d 1239 (Colo. App. 2001) (decided before the 2004 repeal of §19-3-313).

An individual may deny his past criminal record. Subsection (3)(f)(I) (now subsection (1)(f)(I)) clearly allows an individual to deny past criminal involvement if the criminal record has been sealed pursuant to the provisions of subsection (3)(c)(I) (now subsection (1)(c)(I)). In making a determination, the trial court should consider the severity of the offense sought to be sealed, the time which has elapsed since the conviction, the subsequent criminal history of the petitioner, and the need for the government agency to retain the records. D.W.M. v. District Court, 751 P.2d 74 (Colo. 1988); People v. Bushu, 876 P.2d 106 (Colo. App. 1994).

Where a petitioner requests to seal criminal records of an acquittal, the court may also consider factors relating to the strength of the case, petitioner's age and employment history, and various consequences if the records are not sealed. The balance test allows for consideration of other factors on a case-by-case basis. People v. Bushu, 876 P.2d 106 (Colo. App. 1994).

Where all charges against the petitioner were dismissed or resulted in acquittal, the severity of the charges is not a factor supporting denial of a petition to seal the records. If anything, in an acquittal context, the fact that the charges of which the petitioner was acquitted were serious increases the potential harm to the petitioner if the records are not sealed. R.J.Z. v. People, 104 P.3d 278 (Colo. App. 2004).

There is no reason to attach any significance to a brief lapse of time since the trial when the sealing of records is sought after an acquittal. R.J.Z. v. People, 104 P.3d 278 (Colo. App. 2004).

Assessing the strength of the case against a defendant based on the length of jury deliberations is necessarily speculative and does not, without more, establish that the prosecution's case was strong. R.J.Z. v. People, 104 P.3d 278 (Colo. App. 2004).

Where all charges of sexual misconduct were dismissed or resulted in acquittal, the petitioner's desire to pursue employment that will permit the petitioner to supervise and be alone with children could not warrant keeping the records unsealed, given the absence of other factors supporting denial of

the petition to seal the records. *R.J.Z. v. People*, 104 P.3d 278 (Colo. App. 2004).

Subsection (3)(a)(I) applies to charges and not merely convictions, that is, although the exception refers to an "offense", that term is sufficiently broad to include a charge that does not result in a conviction. *Clark v. People*, 221 P.3d 447 (Colo. App. 2009).

Partial sealing. Nothing in this section permits the partial sealing of a record where any portion of the record may not be sealed pursuant to subsection (3). *Clark v. People*, 221 P.3d 447 (Colo. App. 2009), overruled in *In re R.C.*, 2013 COA 77, 309 P.3d 954.

Criminal justice records of an arrest and charges, which include both traffic and non-traffic offenses, can be sealed as to the non-traffic offenses. The statute does not appear to contemplate petitions to seal records for cases that include both traffic offenses and non-traffic offenses. *In re R.C.*, 2013 COA 77, 309 P.3d 954 (overruling *Clark v. People*, 221 P.3d 447 (Colo. App. 2009)).

Petitioner's punishment was increased retroactively in violation of the ex post facto clause of the Colorado Constitution when petitioner was denied the automatic entry of an order limiting access to records relating to the charge against her because the trial court applied an amendment of the statute enacted after petitioner committed her crime. *In re R.B.*, 815 P.2d 999 (Colo. App. 1991).

The opportunity to petition and to have the balancing test applied in a hearing under this section is not a vested or a substantive right. *People v. D.K.B.*, 843 P.2d 1326 (Colo. 1993); *E.J.R. v. District Court, County of Boulder*, 892 P.2d 222 (Colo. 1995).

Therefore, where petitioner was convicted prior to the 1988 amendment to subsection (1)(a) but did not petition for sealing prior to the amendment, applying the provisions of the amendment to the petitioner did not violate the constitutional prohibition against retrospective legislation. *People v. D.K.B.*, 843 P.2d 1326 (Colo. 1993).

Convicted felon, however, has vested privacy interest in sealed criminal records as of the date of the court's final order to seal the records and expiration of the appeal period, regardless of whether the court, having proper subject matter jurisdiction to seal criminal records, inappropriately authorized the sealing of felony records. The judgment may have been erroneous, but is not void. *E.J.R. v. District Court, County of Boulder*, 892 P.2d 222 (Colo. 1995).

Colo. Rev. Stat. § 24-72-704 Sealing of arrest records when no charges filed - automatic sealing (Colorado Revised Statutes (2021 Edition))

An order entered under subsection (1)(c) to seal records must be directed to every custodian having custody of any of the records to be sealed. In re Petition of T.L.M., 39 P.3d 1239 (Colo. App. 2001).

A waiver of the right to request sealing of records is not contrary to public policy. Rather, public policy favors the enforcement of a defendant's express waiver of the statutory right to request sealing of criminal records. People v. Ward-Garrison, 72 P.3d 423 (Colo. App. 2003); Walker-Lawrence v. District Court of Teller County, 74 P.3d 521 (Colo. App. 2003).

Parties may not waive applicable waiting period in order to petition for record sealing. Robertson v. People, 2017 COA 143M, 410 P.3d 1277.

Court erred in granting petition to seal records. The court made three errors in granting the petition: (1) The court considered the impact of the criminal records of three convictions collectively rather than separately; (2) the court did not discuss the factors relevant to the balancing test; and (3) defendant did not present evidence of harm to his privacy or the dangers of unwarranted adverse consequences from his criminal record, his attorney only argued those points. Robertson v. People, 2017 COA 143M, 410 P.3d 1277.

Applied in Tipton v. City of Lakewood ex rel. People, 198 Colo. 18, 595 P.2d 689 (1979); People v. Whittle, 628 P.2d 169 (Colo. App. 1981); People v. Chamberlin, 74 P.3d 489 (Colo. App. 2003).

Colo. Rev. Stat. § 24-72-705 Sealing criminal justice records other than convictions - simplified process - processing fees - applicability (Colorado Revised Statutes (2021 Edition))

§ 24-72-705. Sealing criminal justice records other than convictions - simplified process - processing fees - applicability

(1)

(a) The court shall order the defendant's criminal justice records sealed when:

(I) A case against a defendant is completely dismissed;

(II) The defendant is acquitted of all counts in the case;

(III) The defendant completes a diversion agreement pursuant to section 18-1.3-101 when a criminal case has been filed; or

(IV) The defendant completes a deferred judgment and sentence pursuant to section 18-1.3-102 and all counts are dismissed.

(b) If the court did not order the record sealing at the time of the dismissal or acquittal, the defendant may make such motion at any time subsequent to the dismissal or acquittal through the filing of a written motion in the criminal case with written notice to the prosecuting attorney.

(c) If the defendant moves pursuant to subsection (1)(a) of this section to seal his or her criminal justice records pursuant to the expedited procedures of this section, the court shall promptly process the defendant's request to seal the criminal justice records within the criminal case without the filing of an independent civil action and without any further evidence except for evidence of the dismissal or acquittal. Motions filed pursuant to this section are procedural in nature, and sealing pursuant to this section applies retroactively for all eligible cases when the case has been completely dismissed or the defendant has been acquitted of all counts in a state or municipal criminal case.

(d) Notwithstanding the provision of subsection (1)(c) of this section, if the defendant is acquitted or if the case dismissed is a crime enumerated in section 24-4.1-302(1) in which notice of a hearing on a motion to seal is required pursuant to section 24-4.1-303(11) (b.7), the court shall allow the district attorney the opportunity to inform the victim that the record will be sealed and shall set a return date for the sealing motion no later than forty-two days after receipt of the motion.

(e) The provisions of section 24-72-703(2)(b) and section 24-72-703(5) apply to this section.

Colo. Rev. Stat. § 24-72-705 Sealing criminal justice records other than convictions - simplified process - processing fees - applicability (Colorado Revised Statutes (2021 Edition))

(f) This section does not apply to records that are subject to the procedure set forth in section 18-13-122(13).

(2)

(a) A defendant moving to have his or her criminal justice records sealed or a defendant who has his or her criminal justice records sealed by the court pursuant to this section shall pay a processing fee of sixty-five dollars to cover the actual costs related to the sealing of the criminal justice records, which the court may waive upon a determination of indigency.

(b) When the motion to seal the criminal case is filed in state court, the processing fees collected pursuant to subsection (2)(a) of this section must be transmitted to the state treasurer and credited to the judicial stabilization cash fund created in section 13-32-101(6).

(c) When the motion to seal the criminal case is filed in municipal court, the processing fees collected pursuant to subsection (2)(a) of this section must be reported and paid as municipal costs and must be transmitted to the treasurer of the municipality and deposited in the general fund of the municipality pursuant to section 13-10-115.

(Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Amended by 2018 Ch. 135, §5, eff. 8/8/2018. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1387, § 3, effective August 1. L. 2018:

(1)(d)(V) and (1)(e)(V) added, (HB 18-1078), ch. 135, p. 891, § 5, effective August 8.)

§ 24-72-706. Sealing of criminal conviction records

(1) Sealing of conviction records.

(a) Subject to the limitations described in subsection (2) of this section, a defendant may file a motion in the criminal case in the court in which any conviction records pertaining to the defendant are located for the sealing of the conviction records, except basic identification information, if the motion is filed within the time frame described in subsection (1)(b) of this section and proper notice is given to the district attorney.

(b)

(I) If the offense is a petty offense or a drug petty offense, the motion may be filed one year after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(II) If the offense is a class 2 or class 3 misdemeanor or any drug misdemeanor, the motion may be filed two years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(III) If the offense is a class 4, class 5, or class 6 felony, a level 3 or level 4 drug felony, or a class 1 misdemeanor, the motion may be filed three years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(IV) Subject to the limitations in subsection (2) of this section, for all other offenses, the petition may be filed five years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(c) A motion to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. The defendant shall submit a verified copy of the defendant's criminal history, current through at least the twentieth day before the date of the filing of the petition to the court, along with the motion at the time of filing, but in no event later than the tenth day after the motion is filed. The defendant shall pay for his or her criminal history record.

(d) Upon the filing of any motion pursuant to this section, the court shall initially review the motion and determine whether there are grounds

pursuant to this section to proceed to a hearing on the motion. If the court determines that the motion on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the motion, the defendant is not entitled to relief pursuant to this section, the court shall enter an order denying the motion and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the motion. If the court determines that the motion is sufficient on its face and that no other grounds exist at that time for the court to deny the motion pursuant to this section, the court shall proceed pursuant to the provisions of this section.

(e) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the motion to seal conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees vacated the order.

(f)

(I) If a motion is filed for the sealing of a petty offense, petty drug offense, or, notwithstanding any provision of this part 7 to the contrary, an offense for the possession of marijuana, the court shall order that the records be sealed after the motion is filed and the criminal history filed with the court documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against the defendant or since the date of the defendant's release from supervision, whichever is later.

(II) If a motion is filed for the sealing of a class 2 or class 3 misdemeanor or any drug misdemeanor, the defendant shall provide notice of the motion to the district attorney. The district attorney shall determine whether to object to the motion after considering the factors in subsection (1)(g) of this section. If the district attorney does not object and the offense is not a crime enumerated in section 24-4.1-302(1), the court shall order that the records be sealed if the criminal history filed with the court documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The district attorney shall advise the court of a victim's objection and request for hearing when known. If the district attorney objects to the motion or the offense is a crime enumerated in section 24-4.1-302(1) and the victim requests a hearing, the court shall set the matter for hearing. The court may only seal the records if the criminal history filed with the motion as required by subsection (1)(c) of this section documents to the court that the defendant has not been convicted of a criminal offense since the date of

the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the motion after considering the factors in subsection (1)(g) of this section.

(III) If a motion is filed for the sealing of a class 4, class 5, or class 6 felony, a level 3 or level 4 drug felony, or a class 1 misdemeanor, the defendant shall provide notice of the motion to the district attorney. The district attorney shall determine whether to object to the motion after considering the factors in subsection (1)(g) of this section. If the district attorney does not object and the offense is not a crime enumerated in section 24-4.1-302(1), the court may grant the motion with or without the benefit of a hearing. The district attorney shall advise the court of a victim's objection and request for hearing when known. If the district attorney objects to the motion or the offense is a crime enumerated in section 24-4.1-302(1) and the victim requests a hearing, the court shall set the matter for hearing. The court may only seal the records if the criminal history filed with the motion as required by subsection (1)(c) of this section documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the motion after considering the position of the district attorney and the factors in subsection (1)(g) of this section.

(IV) If a motion is filed for any other offense, the defendant shall provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the motion after considering the factors in subsection (1)(g) of this section. The court shall set any motion filed for a hearing. The court may only seal the records if the criminal history filed with the motion as required by subsection (1)(c) of this section documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the motion after consideration of the position of the district attorney and the factors in subsection (1)(g) of this section.

(g) At any hearing to determine whether records may be sealed, except for basic identification information, the court must determine that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining public access to the conviction records. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, the number of convictions and dates of the convictions for

which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records.

(h) A defendant who files a motion to seal criminal justice conviction records pursuant to this section shall pay a processing fee of sixty-five dollars to cover the actual costs related to the sealing of the criminal justice records, which the court may waive upon a determination of indigency. The defendant shall pay to the Colorado bureau of investigation any costs related to the sealing of his or her criminal conviction records in the custody of the bureau.

(2)

(a) The provisions of this section do not apply to records pertaining to:

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

(II) A class A or class B traffic infraction;

(III) A conviction for a violation of section 42-4-1301(1) or (2);

(IV) A conviction for an offense for which the underlying factual basis involved unlawful sexual behavior as defined in section 16-22-102(9);

(V) A conviction for a violation of section 18-6-401; or

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

(A) Sentences for a crime involving extraordinary aggravating circumstances pursuant to section 18-1.3-401(8);

(B) A sentence for an extraordinary risk crime pursuant to section 18-1.3-401(10);

(C) Sentencing for a crime involving a pregnant victim, pursuant to section 18-1.3-401(13);

(D) Sentencing for a crime pertaining to a special offender pursuant to section 18-18-407;

(E) Sentencing for a criminal conviction for which the underlying factual basis involves domestic violence as defined in section 18-6-800.3;

(F) Sentencing for a criminal conviction for a sexual offense, pursuant to part 4 of article 3 of title 18;

(G) Sentencing for any crime of violence pursuant to section 18-1.3-406;

(H) Sentencing for a felony crime enumerated in section 24-4.1-302(1);

(I) Sentencing for a felony offense in violation of section 18-9-202;

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

(K) Sentencing for an offense in violation of part 1 of article 6 of title 18;

(L) Sentencing for an offense in violation of section 18-5-902(1);

(M) Sentencing for an offense in violation of section 18-3.5-103(4), (5), (6), (7), (8), and (9); or

(N) Sentencing for an offense in violation of section 18-7-203.

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

(c) This section does not apply to records that are subject to the procedure set forth in section 18-13-122(13).

(3) **Applicability.** Motions filed pursuant to this section are procedural in nature, and sealing pursuant to this section applies retroactively to all eligible cases.

(Amended by 2021 Ch. 157, §6, eff. 5/20/2021. Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1391, § 3, effective August 1.)

Colo. Rev. Stat. § 24-72-707 Sealing of criminal conviction records information for offenses committed by victims of human trafficking (Colorado Revised Statutes (2021 Edition))

§ 24-72-707. Sealing of criminal conviction records information for offenses committed by victims of human trafficking

(1) **Sealing of conviction records.** At any time after conviction, a defendant may file a motion in the case in which any conviction records exist pertaining to the defendant's conviction for any misdemeanor offense or municipal code or ordinance violation, excluding any offense of a crime as defined in section 24-4.1-302(1).

(2) A defendant moving to have his or her criminal records sealed pursuant to this section is not required to pay a processing fee.

(3) The court shall order the records sealed after:

(a) The petition is filed; and

(b) The defendant establishes by a preponderance of the evidence that, at the time he or she committed the offense, he or she had been trafficked by another person, as described in section 18-3-503 or 18-3-504, for the purpose of performing the offense.

(Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1392, § 3, effective August 1.)

Colo. Rev. Stat. § 24-72-708 Sealing of criminal conviction records information for municipal offenses for convictions (Colorado Revised Statutes (2021 Edition))

§ 24-72-708. Sealing of criminal conviction records information for municipal offenses for convictions

(1) Sealing of conviction records.

(a)

(I) A defendant may file a motion in which any conviction records pertaining to the defendant for a municipal violation are located for the sealing of the conviction records, except basic identification information, if:

(A) The motion is filed three or more years after the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction, whichever is later; and

(B) The defendant has not been charged or convicted of a felony, misdemeanor, or misdemeanor traffic offense in the three or more years since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later; and

(C) The conviction records to be sealed are not for a misdemeanor traffic offense committed either by a holder of a commercial learner's permit or a commercial driver's license, as defined in section 42-2-402, or by the operator of a commercial motor vehicle, as defined in section 42-2-402.

(II) Notwithstanding the provisions of subsection (1)(a)(I)(B) of this section, a defendant may petition the district court of the district in which any conviction records pertaining to the defendant for a municipal violation, except a municipal assault or battery offense in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3(1), or any other municipal violation in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3(1), or petty offense are located for the sealing of the conviction records, except basic identification information, if:

(A) The defendant was convicted of a single offense that was not a felony and did not involve domestic violence as defined in section 18-6-800.3(1), unlawful sexual behavior as defined in section 16-22-102(9), or child abuse as defined in section 18-6-401;

(B) That offense occurred within three years of the date of the final disposition of all criminal proceedings against him or her related to the conviction that the defendant is seeking to have sealed or within three years of the date of the defendant's release from supervision related to the

Colo. Rev. Stat. § 24-72-708 Sealing of criminal conviction records information for municipal offenses for convictions (Colorado Revised Statutes (2021 Edition))

conviction that the defendant is seeking to have sealed, whichever is later; and

(C) The defendant has not been convicted of a felony, misdemeanor, or misdemeanor traffic offense in the ten or more years since the date of the final disposition of all criminal proceedings against him or her for the subsequent criminal case or in the ten or more years since the date of the defendant's release from supervision for the subsequent case, whichever is later.

(b) Upon filing the petition, the defendant shall pay the filing fee required by law.

(2)

(a) Upon the filing of a motion, the court shall review the motion and determine whether there are grounds pursuant to this section to proceed to a hearing on the petition. If the court determines that the motion on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the motion, the defendant is not entitled to relief pursuant to this section, the court shall enter an order denying the motion and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the motion.

(b) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition pursuant to this section, the court shall set a date for a hearing and the court shall notify by certified mail the prosecuting attorney, the arresting agency, and any other person or agency identified by the defendant.

(3) After the hearing described in subsection (2) of this section is conducted and if the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining public access to the conviction records, the court may order the conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the factors in section 24-72-706(1)(g).

(Amended by 2019 Ch. 295, §1, eff. 8/2/2019. Amended by 2018 Ch. 135, §6, eff. 8/8/2018. Amended by 2017 Ch. 382, §1, eff. 8/9/2017. Added by 2014 Ch. 317, §3, eff. 8/1/2014. L. 2014: Entire part added, (SB 14-206), ch. 317, p. 1392, § 3, effective August 1. L. 2017: (1) amended, (HB 17-1360), ch. 382, p. 1988, § 1, effective August 9. L. 2018: (2)(c) added, (HB 18-1078), ch. 135, p. 891, § 6, effective August 8.)

§ 24-72-709. Sealing of criminal conviction records information for multiple conviction records

(1)

(a) Subject to the provisions of subsection (5) of this section, a defendant with multiple conviction records in the state may petition the court of the jurisdiction where the conviction record or records pertaining to the defendant are located for the sealing of the conviction records, except basic identifying information, if the record or records are not eligible for sealing pursuant to any other section in this part 7 because of an intervening conviction and if the petition is filed within the time frame described in subsection (2) of this section and proper notice is given to the district attorney. If the multiple conviction records are in different jurisdictions, the defendant shall file a petition in each jurisdiction with a conviction record that includes a copy of each petition filed in the other jurisdictions and provide notice of the petition to each district attorney.

(b) A motion to seal conviction records pursuant to this section must include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. The defendant shall submit a verified copy of their criminal history, current through at least the twentieth day before the date of the filing of the petition to the court, along with the motion at the time of filing, but in no event later than the tenth day after the motion is filed. The defendant shall pay for his or her criminal history record.

(2)

(a) If the offense or highest offense of the multiple offenses is an eligible petty offense or eligible petty drug offense, the petition may be filed two years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning the conviction, or the latest in time criminal conviction of the multiple convictions.

(b) If the offense or highest offense of the multiple offenses is an eligible misdemeanor or eligible misdemeanor drug offense, or eligible level 4 drug felony, the petition may be filed five years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning the conviction, or the latest in time criminal conviction of the multiple convictions.

(c) If the offense or highest offense of the multiple offenses is an eligible felony or eligible drug felony, the petition may be filed ten years after the

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later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning the conviction, or the latest in time criminal conviction of the multiple convictions.

(3)

(a) If the offense or highest offense of the multiple offenses is an eligible petty offense or eligible petty drug offense, the petition may be filed only if the defendant has no more than five convictions in separate criminal cases.

(b) If the offense or highest offense of the multiple offenses is an eligible class 2 or eligible class 3 misdemeanor or eligible level 1 or eligible level 2 misdemeanor drug offense, the petition may be filed only if the defendant has no more than four previous convictions in separate criminal cases.

(c) If the offense or highest offense of the multiple offenses is an eligible class 1 misdemeanor, an eligible class 4, eligible class 5, or eligible class 6 felony, or an eligible drug felony, the petition may be filed only if the defendant has no more than three previous convictions in separate criminal cases.

(4)

(a) The defendant shall pay the processing fee to the court and provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-706 (1)(g). The district attorney shall advise the court of a victim's objection and request for hearing when known. If the district attorney does not object and the offense is not a crime enumerated in section 24-4.1-302 (1), the court may decide the petition with or without the benefit of a hearing. If the district attorney objects to the petition or the offense is a crime enumerated in section 24-4.1-302 (1) and the district attorney requests a hearing on behalf of a victim, the court shall set the matter for hearing. To order the record sealed, the criminal history filed with the petition must document to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the petition after considering the factors in section 24-72-706 (1)(g).

(b) Conviction records may not be sealed if the defendant still owes restitution, fines, court costs, late fees, or other fees ordered by the court in the case that is the subject of the petition to seal conviction records, unless

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the court that entered the order for restitution, fines, court costs, late fees, or other fees has vacated the order.

(5)

(a) The provisions of this section do not apply to records pertaining to:

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

(II) A class A or class B traffic infraction;

(III) A conviction for a violation of section 42-4-1301 (1) or (2);

(IV) A conviction for an offense for which the underlying factual basis involved unlawful sexual behavior as defined in section 16-22-102 (9);

(V) A conviction for a violation of section 18-6-401; or

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

(A) Sentences for a crime involving extraordinary aggravating circumstances pursuant to section 18-1.3-401 (8);

(B) A sentence for an extraordinary risk crime pursuant to section 18-1.3-401 (10);

(C) Sentencing for a crime involving a pregnant victim pursuant to section 18-1.3-401 (13);

(D) Sentencing for a crime pertaining to a special offender pursuant to section 18-18-407;

(E) Sentencing for a criminal conviction for which the underlying factual basis involves domestic violence as defined in section 18-6-800.3;

(F) Sentencing for a criminal conviction for a sexual offense, pursuant to part 4 of article 3 of title 18;

(G) Sentencing for any crime of violence pursuant to section 18-1.3-406;

(H) Sentencing for a felony crime enumerated in section 24-4.1-302 (1);

(I) Sentencing for a felony offense in violation of section 18-9-202;

(J) Sentencing for an offense classified as a class 1, 2, or 3 felony or a level 1 drug felony pursuant to any section of title 18;

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(K) Sentencing for an offense in violation of part 1 of article 6 of title 18;

(L) Sentencing for an offense in violation of section 18-5-902 (1);

(M) Sentencing for an offense in violation of section 18-3.5-103; or

(N) Sentencing for an offense in violation of section 18-7-203.

(b) Notwithstanding the provisions of this section, a misdemeanor offense ineligible pursuant to the provisions of this section is eligible for sealing pursuant to this section if the district attorney consents to the sealing or if the court finds, by clear and convincing evidence, that the petitioner's need for sealing of the record is significant and substantial, the passage of time is such that the petitioner is no longer a threat to public safety, and the public disclosure of the record is no longer necessary to protect or inform the public. However, no more than one misdemeanor that is a crime as defined in section 24-4.1-302 (1) is eligible for sealing pursuant to the provisions of this section.

(c) This section does not apply to records that are subject to the procedure set forth in section 18-13-122 (13).

(Added by 2021 Ch. 455, §7, eff. 9/7/2021.)

2021 Ch. 455, was passed without a safety clause. See Colo. Const. art. V, § 1(3).

Colo. Rev. Stat. § 24-72-710 Sealing of criminal conviction records information for offenses that receive a full and unconditional pardon (Colorado Revised Statutes (2021 Edition))

§ 24-72-710. Sealing of criminal conviction records information for offenses that receive a full and unconditional pardon

(1) At any time after receiving a full and unconditional pardon, a defendant may file a motion in the case in which any conviction records exist pertaining to the defendant's conviction for any offenses that received a full and unconditional pardon.

(2) A defendant moving to have his or her criminal records sealed pursuant to this section is not required to pay a processing fee but shall provide notice of the motion to the district attorney.

(3) The district attorney shall determine whether to object to the petition after considering the factors in section 24-72-706 (1)(g) and the additional factor of the defendant having received a full and unconditional pardon. The district attorney shall advise the court of a victim's objection and request for hearing if known. If the district attorney does not object and the offense is not a crime enumerated in section 24-4.1-302 (1), the court may decide the petition with or without the benefit of a hearing. If the district attorney objects to the petition or the offense is a crime enumerated in section 24-4.1-302 (1) and the district attorney requests a hearing on behalf of a victim, the court shall set the matter for hearing. The court shall order the records sealed unless the court finds by clear and convincing evidence that the public interest in retaining public access to the conviction records outweighs the harm to the privacy of the defendant, the dangers of unwarranted, adverse consequences to the defendant, and the intent of the full and unconditional pardon.

(Added by 2021 Ch. 455, §7, eff. 9/7/2021.)

2021 Ch. 455, was passed without a safety clause. See Colo. Const. art. V, § 1(3).