

CHAPTER 335

GOVERNMENT - STATE

HOUSE BILL 17-1208

BY REPRESENTATIVE(S) Weissman, Arndt, Benavidez, Buckner, Exum, Gray, Hamner, Hansen, Herod, Hooton, Kennedy, Lebsack, Lee, McKean, Melton, Pabon, Pettersen, Salazar, Singer, Young, Duran, Coleman, Lontine, Rosenthal; also SENATOR(S) Gardner, Kagan, Tate.

AN ACT**CONCERNING CLARIFICATIONS TO THE CRIMINAL JUSTICE RECORDS SEALING PROCESS.**

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

SECTION 1. In Colorado Revised Statutes, 24-72-701, **add** (9) as follows:

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

(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.

SECTION 2. In Colorado Revised Statutes, 24-72-702, **amend** (1)(a)(II) introductory portion and (1)(a)(II)(B); and **add** (1)(f.5) as follows:

24-72-702. Sealing of arrest and criminal records other than convictions. (1) (a) (II) Except as provided in ~~subparagraph (III) of this paragraph (a)~~ SUBSECTION (1)(a)(III) OF THIS SECTION, arrest or criminal records information may not be sealed if:

(B) A dismissal occurs as part of a plea agreement in a separate case IN WHICH A JUDGMENT OF CONVICTION HAS BEEN ENTERED; or

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(f.5) NOTWITHSTANDING THE PROVISIONS OF SUBSECTIONS (1)(e) AND (1)(f) 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.

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

24-72-702.5. Sealing criminal justice records other than convictions - simplified process - defendant option - processing fees. (1) (a) In addition to the procedures in section 24-72-702, any time a case against a ~~person in interest~~ DEFENDANT is completely dismissed, ~~where~~ WHEN THE ~~person in interest~~ DEFENDANT is acquitted OF ALL COUNTS IN THE CASE, the ~~person in interest~~ DEFENDANT completes a diversion agreement under section 18-1.3-101, C.R.S., or the ~~person in interest~~ DEFENDANT completes a deferred judgment and sentence under section 18-1.3-102, C.R.S., AND ALL COUNTS ARE DISMISSED, the court shall give the defendant eligible to have his or her criminal justice records sealed the option of immediately moving to have his or her criminal justice records sealed. This motion may be informal and may be made in open court at the time of the dismissal of the case or the acquittal of the defendant. The motion may also be made by the defendant at a 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.

(b) If the defendant moves under ~~this subsection (1)~~ SUBSECTION (1)(a) OF THIS SECTION to seal his or her criminal justice records under 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 ~~When the court seals criminal justice records under this section the court shall provide a copy of the court's order to each custodian who may have custody of any of the records subject to the order. The person in interest may also provide a copy of the order to any other custodian of records subject to the order~~ AND WITHOUT ANY FURTHER EVIDENCE EXCEPT FOR EVIDENCE OF THE DISMISSAL OR ACQUITTAL. MOTIONS FILED UNDER 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.

(c) NOTWITHSTANDING THE PROVISION OF SUBSECTION (1)(b) OF THIS SECTION, IF THE DEFENDANT IS ACQUITTED OF 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 (1)(b.7), THE COURT SHALL ALLOW THE DISTRICT ATTORNEY OPPORTUNITY TO NOTIFY THE VICTIM AND SHALL SET A RETURN DATE FOR A HEARING ON THE SEALING MOTION NO LATER THAN FORTY-TWO DAYS AFTER RECEIPT OF THE MOTION.

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

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

(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 ~~person in interest~~ DEFENDANT moving to have his or her criminal justice records sealed under 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 MAY BE WAIVED BY THE COURT UPON A DETERMINATION OF INDIGENCY.

(b) WHEN THE MOTION TO SEAL THE CRIMINAL CASE IS FILED IN STATE COURT, the processing fees collected under ~~paragraph (a) of this subsection (2)~~ 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.R.S.~~

(c) WHEN THE MOTION TO SEAL THE CRIMINAL CASE IS FILED IN MUNICIPAL COURT, THE PROCESSING FEES COLLECTED UNDER SUBSECTION (2)(a) OF THIS SECTION MUST BE REPORTED AND PAID AS MUNICIPAL COST 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.

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

Approved: June 5, 2017