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MEMORANDUM

October 31, 2016

TO: Interested Persons
FROM: Jessika Shipley, Principal Analyst, 303-866-3528
SUBJECT: Sealing and Expunging Criminal Records

Summary

This memorandum discusses Colorado law on the subject of the expungement of juvenile delinquency records, including the offenses that may not be expunged, and provides information about sealing adult arrest records, criminal records other than convictions, and conviction records. Further information about the process of expunging and sealing records may be found on the Colorado Judicial Branch website.

Juvenile Records

While sealing and expungement basically refer to the same thing, expungement only applies to juvenile delinquency records.¹ With an order of expungement from the court, an individual with a juvenile criminal record may indicate when asked that no criminal record exists. Expunged records may only be examined by an order of the court, after a hearing where good cause is shown. To enter an order to expunge all records in the custody of the court or any other agency, the court must find that:

- the petitioner has not been convicted of a crime and has not been adjudicated as a juvenile delinquent since the termination of the court's jurisdiction or the petitioner's unconditional release from parole supervision;
- there are no pending criminal or delinquency actions against the petitioner;²
- the rehabilitation of the petitioner has been attained to the satisfaction of the court; and
- expungement is in the best interests of the petitioner and the community.

Eligibility for expungement. An individual is eligible to petition for expungement at different times, depending on the circumstances of a case. An expungement petition, regardless of the circumstances, may only be filed once in each 12-month period. Table 1 outlines the eligibility requirements.

¹Section 19-1-306, C.R.S.

²A delinquency action happens as the consequence of a violation of any statute, ordinance, or court order. Criminal actions refer only to violations of statutes and ordinances.

Table 1
Eligibility Requirements for Expungement in Colorado

| Time Period Following a Conviction | Circumstances |
|------------------------------------|---|
| At any time | A conviction for prostitution, soliciting for prostitution, keeping a place of prostitution, public indecency, soliciting for child prostitution, or any corresponding municipal violation if the individual proves that he or she was subject to human trafficking or coercion for the purposes of performing the offense. |
| Immediately | A finding of not guilty at an adjudicatory trial. |
| | Dismissal in its entirety of a petition due to nonprosecution of an offense. |
| | Successful completion of a juvenile diversion program, a deferred adjudication, or an informal adjustment. |
| One year | A law enforcement contact that did not result in a referral to another agency. |
| | The termination of the court's jurisdiction over the petitioner after successful completion of probation. |
| Three years | The petitioner's unconditional release from commitment to the Department of Human Services. |
| | The petitioner's unconditional release from parole supervision. |
| Five years | The termination of the court's jurisdiction over the petitioner or the petitioner's unconditional release from probation or parole supervision, whichever date is later, if the juvenile has been adjudicated a repeat or mandatory juvenile offender, assuming the juvenile has not further violated any criminal statute. |

Source: Legislative Council Staff

Exceptions. The following individuals are not eligible to petition for expungement, regardless of the amount of time that has passed since the commission of a crime:

- aggravated juvenile offenders;³
- violent juvenile offenders;⁴
- juveniles who were charged and sentenced as adults;
- juveniles who committed offenses involving unlawful sexual behavior; and
- juveniles who have failed to pay court-ordered restitution to victims of the offense that is the basis of the juvenile record.

Sealing of Arrest and Criminal Records Other than Convictions⁵

Applicability. Adult criminal records are sealed rather than expunged. Colorado law provides for the sealing of records of official actions involving a criminal offense (except for basic identification information) when:

- the individual completed a diversion agreement;
- the individual was not charged with a crime;⁶
- the case was dismissed; or
- the individual was acquitted.

³ A designation given to juvenile offenders who are adjudicated for very serious offenses, especially when more than one adjudication occurs over a period of time or the adjudication is related to a sexual offense.

⁴ A designation given to juvenile offenders who commit crimes of violence pursuant to section 18-1.3-406 (2), C.R.S.

⁵Section 24-72-702, C.R.S.

⁶This assumes that the statute of limitations for the offense for which the person was arrested that has the longest statute of limitations has run, or the individual was not charged and the statute of limitations has not run, but the individual is no longer being investigated by law enforcement.

A petition to seal the records of offenses that were not charged or were dismissed due to a plea agreement in a separate case may be filed ten years or more after the disposition of the case, provided the individual has not been charged with any criminal offense in the intervening ten years.

Expedited process. Any time a case against an eligible defendant is completely dismissed or where the person is acquitted or completes a diversion agreement or a deferred judgement and sentence, the court is required to give the defendant the option of immediately moving to have his or her criminal justice records sealed.

Mistaken identity. When an individual is arrested due to a case of mistaken identity and no charges are ever filed, the arresting agency is required to petition the district court for expungement of the arrest and criminal records of that individual within 90 days of the mistake being discovered. No later than 90 days after receiving such a petition, the court is required to order the expungement of the affected records.

Consideration by the court. The court must consider the merits of the petition to determine whether a hearing regarding the sealing of records is warranted. At a hearing, the court may find that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records.

Effect of an order to seal records. After an order to seal records has been entered and in response to any inquiry about the matter, the petitioner and all criminal justice agencies may legally respond that no such records exist.

Exclusions. The records described above may never 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. Additionally, records of most motor vehicle offenses and sexual offenses may not be sealed. Finally, records of criminal activity cannot be sealed against other criminal justice agencies conducting an investigation.

Sealing of Criminal Conviction Records

In limited circumstances for offenses related to controlled substances, offenses related to human trafficking, and offenses related to theft of public transportation services, among others, criminal conviction records may also be sealed. The process for sealing conviction records is similar to that of sealing other criminal records, except where noted.

For all conviction records that may be sealed, except those related to theft of public transportation services, an order sealing the records does not vacate a conviction or deny access to such records by any agency required by law to conduct a criminal background check. If the petitioner is convicted of a criminal offense after the entry of an order sealing conviction records, the court is required to unseal the original conviction records.

Offenses related to controlled substances between July 1, 2008, and June 30, 2011.⁷ For certain convictions that occurred between July 1, 2008, and June 30, 2011 (all petty drug offenses, all misdemeanor drug offenses, and class 5 and 6 felony drug offenses), a petition must be filed no less than ten years after:

- the final disposition of criminal proceedings against the petitioner; or

⁷Section 24-72-704, C.R.S

- the petitioner's release from supervision concerning a criminal conviction, whichever is later.

Additionally, the petitioner may not have been charged or convicted of a criminal offense in the intervening ten years.

The petitioner may obtain a court order to seal records of convictions that occurred during this time period only if:

- the prosecuting attorney does not object to the sealing;
- the petitioner pays all reasonable attorney fees and costs of the prosecuting attorney related to the petition to seal prior to the entry of an order sealing the records; and
- the petitioner pays all required filing fees related to the petition to seal.

Offenses related to controlled substances on or after July 1, 2011.⁸ In 2011, the General Assembly shortened some of the waiting periods for petitioning to seal certain drug conviction records with the enactment of House Bill 11-1167. The bill also expanded applicability to all felony drug offenses. Table 2 explains the amended time periods and procedures for sealing records of convictions that occurred on or after July 1, 2011.

**Table 2
Petition Process to Seal Certain Drug Offense Records for Convictions
On or After July 1, 2011**

| Type of Conviction | Waiting Period to File Petition* | Effect of District Attorney Objection | Court Procedure |
|---|----------------------------------|---------------------------------------|--|
| Petty Drug Offense | 1 year | Not solicited | The court shall seal the conviction record. |
| Petty Offense | 3 Years | Not solicited | The court shall seal the conviction record. |
| Class 2 and 3 Misdemeanor or Level 2 Drug Misdemeanor | 3 Years | Hearing | If there is no DA objection, the court shall seal the record. If a hearing is held, the court may seal the record. |
| Class 1 Misdemeanor or Level 1 Drug Misdemeanor | 5 Years | Hearing | If there is no DA objection, the court shall seal the record. If a hearing is held, the court may seal the record. |
| Class 5 and 6 Felonies or Level 4 Drug Felony | 7 Years | Hearing | If there is no DA objection, the court may seal the record without hearing, or it may hold a hearing. The court may seal the record with or without a hearing. |
| Other Felonies | 10 Years | Dismiss petition | A hearing is required if the petition is not dismissed. The court may seal the record after the hearing. |

Source: Legislative Council Staff

* The waiting period begins at the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision, whichever is later.

⁸Section 24-72-705, C.R.S.

The court will only order the sealing of records of drug-related convictions occurring after July 1, 2011, if the individual can demonstrate that he or she has not been charged or convicted for a criminal offense since the date of the final disposition of court proceeding or his or her release from supervision, whichever is later.

Offenses related to human trafficking.⁹ The court is required to seal records of convictions for the offenses of prostitution, soliciting for prostitution, keeping a place of prostitution, and public indecency in cases where the following conditions have been met:

- a petition is filed;
- the filing fee is paid; and
- the petitioner shows by a preponderance of the evidence that, at the time he or she committed the offense, he or she had been coerced, sold, exchanged, bartered, or leased for the purpose of performing the act that precipitated the conviction.

Offenses involving theft of public transportation services.¹⁰ The court is required to seal the records of an individual who was convicted of theft of public transportation services by fare evasion, as that offense existed prior to June 8, 2012, and who completed his or her sentence (including the payment of fines and surcharges) by June 8, 2012. Individuals with such a conviction who did not complete their sentence prior to June 8, 2012, may move the court to seal the records.

Petty offenses and municipal violations.¹¹ An individual may petition the district court to seal any conviction records pertaining to the individual for a petty offense or municipal violation if:

- the petition is filed three or more years after the final disposition of all criminal proceedings against the individual or the release of the individual from supervision, whichever is later; and
- the individual has not been charged with or convicted of a felony, misdemeanor, or misdemeanor traffic offense in three or more years.

Records of convictions for misdemeanor traffic offenses committed by a holder of a commercial driver's permit or commercial driver's license or the operator of a commercial motor vehicle may not be sealed.

Offenses related to posting an intimate photograph on the Internet.¹² An individual who has been convicted of posting a private image for harassment or posting a private image for pecuniary gain; completed his or her sentence, including the payment of the fine; and not been convicted of another crime for at least five years after the completion of the sentence may petition the district court to seal those conviction records.

⁹Section 24-72-706, C.R.S.

¹⁰Section 24-72-707, C.R.S.

¹¹Section 24-72-708, C.R.S.

¹²Section 24-72-709, C.R.S.