

First Regular Session
Seventy-third General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 21-0572.01 Michael Dohr x4347

SENATE BILL 21-074

SENATE SPONSORSHIP

Coleman,

HOUSE SPONSORSHIP

(None),

Senate Committees
Judiciary

House Committees

A BILL FOR AN ACT

101 CONCERNING EXPUNGEMENT OF CONVICTION RECORDS FOR
102 NONVIOLENT OFFENSES.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov>.)

The bill creates a process to automatically expunge petty offenses a year after completion of the sentence, nonviolent misdemeanors 3 years after the completion of the sentence, and nonviolent felonies 5 years after the completion of the sentence. The bill creates a list of convictions for which automatic expungement is not permitted. The bill requires the state court administrator (administrator) to compile a list of convictions that are

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

eligible for expungement. After the administrator compiles the list, the administrator sends the list to the Colorado bureau of investigation (bureau) for review, and the bureau removes from the list any convictions in which the identity of the defendant is unverifiable or in which the defendant had another conviction during the waiting period. The bureau sends its amended list to each district attorney in the state, and the district attorney removes any convictions in which the defendant has a pending criminal charge. Each district attorney sends its amended list to the administrator. The administrator compiles all of the lists into one final list and sorts the convictions by judicial district.

If the chief judge of a judicial district authorizes the administrator to issue expungement orders, the administrator shall issue expungement orders based on the final list. If the chief judge of a judicial district does not authorize the administrator to issue expungement orders, the administrator shall send the final list to the chief judge of the judicial district, and the courts of that judicial district shall enter expungement orders based on the final list received.

The administrator shall develop a website that allows a defendant to confidentially determine whether the defendant's conviction has been expunged and provides information about how to receive a copy of the expungement order.

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

2 **SECTION 1. Legislative declaration.** (1) The general assembly
3 finds and declares that Colorado currently permits a person with a
4 conviction to record to have the person's conviction sealed in certain
5 circumstances. The process to have a conviction record sealed usually
6 involves the person petitioning the court and paying a filing fee. Under
7 the current system, a person is often subject to the court's discretion and
8 must use his or her financial resources for that opportunity. According to
9 the Clean Slate Initiative, only 6.5 percent of people get their records
10 cleared in one manner or another. A person who has served his or her
11 sentence and has not engaged the criminal justice system since
12 completing his or her sentence often does not have the financial resources
13 to pay to have a conviction record sealed even though sealing that record

1 would lead to better housing, improved job prospects, and educational
2 opportunities. Criminal backgrounds are often used to structurally screen
3 out applicants in housing rental applications, and according to the
4 American Association of Collegiate Registrars and Admissions Officers,
5 70 percent of four-year universities require applicants to report criminal
6 backgrounds. After a designated period of time, a person should be able
7 to have a clean slate since they no longer are a public safety risk.
8 According to a study published in the Harvard Law Review, only 7.1
9 percent of expungement recipients are rearrested within five years of
10 receiving their expungement and only 2.6 percent are rearrested for
11 violent crimes. Reconviction rates for expungement recipients are even
12 lower: Only 4.2 percent are reconvicted of any crime and only 0.6 percent
13 for violent crimes.

14 (2) The general assembly further finds and declares that a sealing
15 order does not require destruction of the conviction record; the record still
16 exists. A sealing order does not deny access to the convictions records by
17 any court, law enforcement agency, criminal justice agency, prosecuting
18 attorney, or party or agency required by law to conduct a criminal history
19 record check on an individual. The sealing order merely permits the
20 defendant and all criminal justice agencies to reply, upon an inquiry into
21 the matter, that public criminal records do not exist with respect to the
22 person. Sealing is insufficient to provide a person with a clean slate.
23 Expungement of a conviction record, which requires physical destruction
24 of the record, provides that clean slate. Therefore, it is appropriate to
25 create a system in which a person's record is automatically expunged after
26 a certain amount of time has passed since completing the person's
27 sentence.

1 **SECTION 2.** In Colorado Revised Statutes, **add** 24-72-709 as
2 follows:

3 **24-72-709. State court administrator - automatic nonviolent**
4 **conviction expungement - definitions.** (1) FOR PURPOSES OF THIS
5 SECTION, UNLESS THE CONTEXT OTHERWISE REQUIRES:

6 (a) "EXPUNGED" MEANS PHYSICAL DESTRUCTION OF A PAPER
7 RECORD AND PERMANENT REMOVAL OF AN ELECTRONIC RECORD.

8 (b) "NONVIOLENT FELONY OFFENSE" MEANS A FELONY OFFENSE
9 OTHER THAN A CRIME OF VIOLENCE, AS DEFINED IN SECTION 18-1.3-406
10 (2); ANY OF THE FELONY OFFENSES SET FORTH IN SECTION 18-3-104,
11 18-4-203, OR 18-4-301; OR ANY FELONY OFFENSE COMMITTED AGAINST A
12 CHILD AS SET FORTH IN ARTICLES 3, 6, AND 7 OF TITLE 18.

13 (c) "NONVIOLENT MISDEMEANOR OFFENSE" MEANS A CLASS 1, 2,
14 OR 3 MISDEMEANOR THAT DOES NOT INVOLVE CRUELTY TO AN ANIMAL, AS
15 DESCRIBED IN SECTION 18-9-202 (1)(a), OR THE USE OR THREAT OF
16 PHYSICAL FORCE ON OR TO A PERSON IN THE COMMISSION OF THE
17 MISDEMEANOR.

18 (2) THE CONVICTION RECORD FOR A NONVIOLENT MISDEMEANOR
19 OFFENSE OR A NONVIOLENT FELONY OFFENSE IS ELIGIBLE TO BE EXPUNGED
20 PURSUANT TO THIS SECTION THREE YEARS AFTER THE LATER OF THE DATE
21 OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST THE
22 DEFENDANT OR THE RELEASE OF THE DEFENDANT FROM SUPERVISION
23 CONCERNING A CRIMINAL CONVICTION.

24 (3) (a) THE STATE COURT ADMINISTRATOR SHALL COMPILE A LIST
25 OF:

26 (I) PETTY OFFENSES IN WHICH ONE YEAR HAS PASSED AFTER THE
27 LATER OF THE DATE OF THE FINAL DISPOSITION OF ALL CRIMINAL

1 PROCEEDINGS AGAINST THE DEFENDANT OR THE RELEASE OF THE
2 DEFENDANT FROM SUPERVISION CONCERNING A CRIMINAL CONVICTION;

3 (II) NONVIOLENT MISDEMEANOR OFFENSES IN WHICH THREE YEARS
4 HAVE PASSED AFTER THE LATER OF THE DATE OF THE FINAL DISPOSITION
5 OF ALL CRIMINAL PROCEEDINGS AGAINST THE DEFENDANT OR THE RELEASE
6 OF THE DEFENDANT FROM SUPERVISION CONCERNING A CRIMINAL
7 CONVICTION; AND

8 (III) NONVIOLENT FELONY OFFENSES IN WHICH FIVE YEARS HAVE
9 PASSED AFTER THE LATER OF THE DATE OF THE FINAL DISPOSITION OF ALL
10 CRIMINAL PROCEEDINGS AGAINST THE DEFENDANT OR THE RELEASE OF
11 THE DEFENDANT FROM SUPERVISION CONCERNING A CRIMINAL
12 CONVICTION.

13 (b) THE STATE COURT ADMINISTRATOR SHALL USE THE STATE
14 CONVICTION DATABASE AND THE CONVICTION DATABASES OF ENTITIES
15 THAT DO NOT REPORT CONVICTIONS TO THE STATE DATABASE TO COMPILE
16 THE LIST. THE STATE COURT ADMINISTRATOR SHALL COMPILE THE LIST
17 BASED ON A NAME-BASED REVIEW WITH SUFFICIENT POINTS OF REFERENCE
18 FOR IDENTIFICATION VALIDATION AS DETERMINED BY THE STATE COURT
19 ADMINISTRATOR. THE STATE COURT ADMINISTRATOR MUST ONLY INCLUDE
20 CONVICTIONS ON THE LIST IF SUFFICIENT POINTS OF VALIDATION, AS
21 DETERMINED BY THE STATE COURT ADMINISTRATOR, ARE PRESENT. THE
22 STATE COURT ADMINISTRATOR SHALL SORT THE LIST BY JUDICIAL DISTRICT
23 OF CONVICTION.

24 (c) THE STATE COURT ADMINISTRATOR SHALL COMPILE THE INITIAL
25 LIST PURSUANT TO THIS SUBSECTION (3) BY FEBRUARY 1, 2024, AND THE
26 STATE COURT ADMINISTRATOR OR COURT SHALL EXPUNGE ALL
27 CONVICTION RECORDS ELIGIBLE FOR EXPUNGEMENT PURSUANT TO THE

1 FINAL LIST COMPILED PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION
2 BASED ON THE INITIAL LIST BY JULY 1, 2024.

3 (d) BEGINNING JULY 1, 2024, THE STATE COURT ADMINISTRATOR
4 SHALL COMPILE THE LIST PURSUANT TO THIS SUBSECTION (3) EVERY
5 THIRTY-FIVE DAYS AND THE COLORADO BUREAU OF INVESTIGATION AND
6 DISTRICT ATTORNEYS SHALL COMPLETE THEIR REVIEW WITHIN
7 THIRTY-FIVE DAYS AFTER RECEIVING A NEW LIST. THE STATE COURT
8 ADMINISTRATOR OR COURT SHALL EXPUNGE ALL CONVICTION RECORDS
9 ELIGIBLE FOR EXPUNGEMENT PURSUANT TO THE LIST COMPILED PURSUANT
10 TO SUBSECTION (4)(b) OF THIS SECTION WITHIN FOURTEEN DAYS AFTER
11 RECEIPT OF THE AMENDED LIST FROM EACH DISTRICT ATTORNEY.

12 (4) (a) THE STATE COURT ADMINISTRATOR SHALL FORWARD EACH
13 LIST COMPILED PURSUANT TO SUBSECTION (3) OF THIS SECTION TO THE
14 COLORADO BUREAU OF INVESTIGATION. THE COLORADO BUREAU OF
15 INVESTIGATION SHALL COMPARE EACH LIST WITH CRIMINAL HISTORY
16 REPORTS. THE COLORADO BUREAU OF INVESTIGATION SHALL COMPLETE
17 THE COMPARISON BASED ON A FINGERPRINT-BASED REVIEW WITH
18 SUFFICIENT POINTS OF REFERENCE FOR IDENTIFICATION VALIDATION AS
19 DETERMINED BY THE COLORADO BUREAU OF INVESTIGATION. THE
20 COLORADO BUREAU OF INVESTIGATION SHALL REMOVE ANY CONVICTIONS
21 FROM EACH LIST IN WHICH SUFFICIENT IDENTIFICATION VALIDATION
22 CANNOT BE MADE BY THE COLORADO BUREAU OF INVESTIGATION AND
23 ANY CONVICTIONS FOR WHICH THE DEFENDANT HAS AN INTERVENING
24 CONVICTION DURING THE THREE-YEAR WAITING PERIOD. THE COLORADO
25 BUREAU OF INVESTIGATION SHALL FORWARD EACH AMENDED LIST TO
26 EACH DISTRICT ATTORNEY.

27 (b) UPON RECEIPT OF A LIST FROM THE COLORADO BUREAU OF

1 INVESTIGATION, EACH DISTRICT ATTORNEY SHALL REMOVE CONVICTIONS
2 FROM THE LIST IN WHICH A DEFENDANT HAS A PENDING CRIMINAL CHARGE.
3 EACH DISTRICT ATTORNEY SHALL SEND ITS AMENDED LIST TO THE STATE
4 COURT ADMINISTRATOR. THE STATE COURT ADMINISTRATOR SHALL
5 COMPILE ALL OF THE AMENDED LISTS INTO ONE FINAL LIST AND SORT THE
6 CONVICTIONS BY JUDICIAL DISTRICT.

7 (5) (a) IF THE CHIEF JUDGE OF A JUDICIAL DISTRICT AUTHORIZES
8 THE STATE COURT ADMINISTRATOR TO ISSUE EXPUNGEMENT ORDERS
9 BASED ON THE FINAL LIST COMPILED PURSUANT TO SUBSECTION (4)(b) OF
10 THIS SECTION, THE STATE COURT ADMINISTRATOR SHALL ISSUE
11 EXPUNGEMENT ORDERS BASED ON THE FINAL LIST COMPILED PURSUANT TO
12 SUBSECTION (4)(b) OF THIS SECTION. THE STATE COURT ADMINISTRATOR
13 SHALL SEND A COPY OF THE EXPUNGEMENT ORDER TO THE COLORADO
14 BUREAU OF INVESTIGATION, THE LAW ENFORCEMENT AGENCY THAT
15 INVESTIGATED THE CASE, AND THE DISTRICT ATTORNEY'S OFFICE THAT
16 PROSECUTED THE CASE, TO FACILITATE EXPUNGEMENT OF THE RECORDS
17 HELD BY THOSE ENTITIES. THE STATE COURT ADMINISTRATOR SHALL ALSO
18 SEND A COPY TO THE DEFENDANT IF THE CONTACT INFORMATION FOR THE
19 DEFENDANT IS AVAILABLE.

20 (b) IF THE CHIEF JUDGE OF A JUDICIAL DISTRICT DOES NOT
21 AUTHORIZE THE STATE COURT ADMINISTRATOR TO ISSUE EXPUNGEMENT
22 ORDERS, THE STATE COURT ADMINISTRATOR SHALL SEND THE FINAL LIST
23 COMPILED PURSUANT TO SUBSECTION (4)(b) OF THIS SECTION TO THE
24 CHIEF JUDGE OF EACH SUCH JUDICIAL DISTRICT, AND THE COURTS OF THAT
25 JUDICIAL DISTRICT SHALL ENTER EXPUNGEMENT ORDERS BASED ON THE
26 LIST RECEIVED. THE DISTRICT COURT SHALL SEND A COPY OF THE
27 EXPUNGEMENT ORDER TO THE COLORADO BUREAU OF INVESTIGATION, THE

1 LAW ENFORCEMENT AGENCY THAT INVESTIGATED THE CASE, AND THE
2 DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED THE CASE, TO FACILITATE
3 EXPUNGEMENT OF THE RECORDS HELD BY THOSE ENTITIES. THE COURT
4 SHALL ALSO SEND A COPY TO THE DEFENDANT IF THE CONTACT
5 INFORMATION FOR THE DEFENDANT IS AVAILABLE AND TO THE STATE
6 COURT ADMINISTRATOR FOR PURPOSES OF SUBSECTION (5)(c) OF THIS
7 SECTION.

8 (c) THE STATE COURT ADMINISTRATOR SHALL DEVELOP A WEBSITE
9 THAT ALLOWS A DEFENDANT TO CONFIDENTIALLY DETERMINE WHETHER
10 THE DEFENDANT'S CONVICTION HAS BEEN EXPUNGED PURSUANT TO THIS
11 SECTION AND PROVIDES INFORMATION ABOUT HOW TO RECEIVE A COPY OF
12 THE EXPUNGEMENT ORDER.

13 (6) WHEN A COURT ENTERS AN ORDER EXPUNGING CRIMINAL
14 RECORDS PURSUANT TO SUBSECTION (5)(a) OR (5)(b) OF THIS SECTION, THE
15 DEFENDANT SHALL PROVIDE A PRIVATE CUSTODIAN WITH A COPY OF THE
16 EXPUNGEMENT ORDER AND SEND THE PRIVATE CUSTODIAN AN ELECTRONIC
17 NOTIFICATION OF THE EXPUNGEMENT ORDER. EACH PRIVATE CUSTODIAN
18 THAT RECEIVES A COPY OF THE EXPUNGEMENT ORDER FROM THE
19 PETITIONER SHALL REMOVE THE RECORDS THAT ARE SUBJECT TO THE
20 EXPUNGEMENT ORDER FROM ITS DATABASE.

21 (7) UPON THE ENTRY OF AN ORDER TO EXPUNGE THE RECORDS, THE
22 DEFENDANT AND ALL CRIMINAL JUSTICE AGENCIES MAY PROPERLY REPLY,
23 UPON ANY INQUIRY INTO THE MATTER, THAT NO SUCH RECORDS EXIST
24 WITH RESPECT TO THE PERSON.

25 (8) EMPLOYERS, EDUCATIONAL INSTITUTIONS, STATE AND LOCAL
26 GOVERNMENT AGENCIES, OFFICIALS, AND EMPLOYEES SHALL NOT, IN ANY
27 APPLICATION OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN

1 APPLICANT TO DISCLOSE ANY INFORMATION CONTAINED IN EXPUNGED
2 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION
3 CONCERNING ARREST AND CRIMINAL RECORDS INFORMATION THAT HAS
4 BEEN EXPUNGED, INCLUDE A REFERENCE TO OR INFORMATION
5 CONCERNING THE EXPUNGED INFORMATION AND MAY STATE THAT NO
6 SUCH ACTION HAS EVER OCCURRED. SUCH AN APPLICATION MAY NOT BE
7 DENIED SOLELY BECAUSE OF THE APPLICANT'S REFUSAL TO DISCLOSE
8 ARREST AND CRIMINAL RECORDS INFORMATION THAT HAS BEEN
9 EXPUNGED.

10 (9) (a) THIS SECTION DOES NOT APPLY TO RECORDS PERTAINING
11 TO:

12 (I) A CLASS 1 OR CLASS 2 MISDEMEANOR TRAFFIC OFFENSE;

13 (II) A CLASS A OR CLASS B TRAFFIC INFRACTION;

14 (III) A CONVICTION FOR A VIOLATION OF SECTION 42-4-1301 (1) OR
15 (2);

16 (IV) A CONVICTION FOR AN OFFENSE FOR WHICH THE UNDERLYING
17 FACTUAL BASIS INVOLVED UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN
18 SECTION 16-22-102 (9);

19 (V) CONVICTION FOR A VIOLATION OF SECTION 18-6-401; OR

20 (VI) A CONVICTION THAT IS SUBJECT TO ONE OR MORE OF THE
21 FOLLOWING PROVISIONS:

22 (A) SENTENCING FOR AN OFFENSE CLASSIFIED AS A CLASS 1, 2, 3,
23 4, OR 5 FELONY OR A LEVEL 1 DRUG FELONY PURSUANT TO ANY SECTION
24 OF TITLE 18;

25 (B) SENTENCING FOR A CRIME INVOLVING EXTRAORDINARY
26 AGGRAVATING CIRCUMSTANCES PURSUANT TO SECTION 18-1.3-401 (8);

27 (C) SENTENCING FOR AN EXTRAORDINARY RISK CRIME PURSUANT

1 TO SECTION 18-1.3-401 (10);
2 (D) SENTENCING FOR A CRIME INVOLVING A PREGNANT VICTIM
3 PURSUANT TO SECTION 18-1.3-401 (13);
4 (E) SENTENCING FOR A CRIME PERTAINING TO A SPECIAL OFFENDER
5 PURSUANT TO SECTION 18-18-407;
6 (F) SENTENCING FOR A CRIMINAL CONVICTION FOR WHICH THE
7 UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE AS DEFINED
8 IN SECTION 18-6-800.3;
9 (G) SENTENCING FOR A CRIMINAL CONVICTION FOR A SEXUAL
10 OFFENSE PURSUANT TO PART 4 OF ARTICLE 3 OF TITLE 18;
11 (H) SENTENCING FOR ANY CRIME OF VIOLENCE PURSUANT TO
12 SECTION 18-1.3-406;
13 (I) SENTENCING FOR A FELONY CRIME ENUMERATED IN SECTION
14 24-4.1-302 (1);
15 (J) SENTENCING FOR A FELONY OFFENSE IN VIOLATION OF SECTION
16 18-9-202;
17 (K) SENTENCING FOR AN OFFENSE IN VIOLATION OF PART 1 OF
18 ARTICLE 6 OF TITLE 18;
19 (L) SENTENCING FOR AN OFFENSE IN VIOLATION OF SECTION
20 18-5-902 (1);
21 (M) SENTENCING FOR AN OFFENSE IN VIOLATION OF SECTION
22 18-3.5-103; OR
23 (N) SENTENCING FOR AN OFFENSE IN VIOLATION OF SECTION
24 18-7-203.
25 (b) NOTWITHSTANDING THE PROVISIONS OF THIS SECTION, A CLASS
26 5 OR 6 FELONY OFFENSE OR MISDEMEANOR OFFENSE INELIGIBLE PURSUANT
27 TO THIS SECTION IS ELIGIBLE FOR EXPUNGEMENT PURSUANT TO THIS

1 SECTION IF THE DISTRICT ATTORNEY CONSENTS TO THE SEALING AND THE
2 VICTIM HAS BEEN NOTIFIED BY THE DISTRICT ATTORNEY, OR IF THE COURT
3 FINDS, BY CLEAR AND CONVINCING EVIDENCE, THAT THE PETITIONER'S
4 NEED FOR SEALING OF THE RECORD IS SIGNIFICANT AND SUBSTANTIAL, THE
5 PASSAGE OF TIME IS SUCH THAT THE PETITIONER IS NO LONGER A THREAT
6 TO PUBLIC SAFETY, AND THE PUBLIC DISCLOSURE OF THE RECORD IS NO
7 LONGER NECESSARY TO PROTECT OR INFORM THE PUBLIC.

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

10 **SECTION 3. Safety clause.** The general assembly hereby finds,
11 determines, and declares that this act is necessary for the immediate
12 preservation of the public peace, health, or safety.