

## CHAPTER 384

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**CRIMINAL LAW AND PROCEDURE**

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## HOUSE BILL 24-1133

BY REPRESENTATIVE(S) Mabrey and Soper, Amabile, Bacon, Boesenecker, Brown, Clifford, Daugherty, deGruy Kennedy, English, Epps, Garcia, Hamrick, Hernandez, Herod, Jodeh, Joseph, Kipp, Lieder, Lindsay, Mauro, Ortiz, Parenti, Ricks, Rutinel, Sirota, Snyder, Story, Titone, Valdez, Vigil, Weissman, Woodrow;  
also SENATOR(S) Rodriguez, Buckner, Cutter, Michaelson Jenet, Priola, Van Winkle.

**AN ACT****CONCERNING MATTERS RELATED TO ACCESS TO CRIMINAL RECORDS.**

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

**SECTION 1.** In Colorado Revised Statutes, 24-72-702, **amend** (1)(b) as follows:

**24-72-702. Expungement of arrest records in case of mistaken identity - definitions.** (1) (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. IF THE ARRESTING AGENCY FAILS TO SUBMIT A PETITION WITHIN THE PRESCRIBED TIMEFRAME PURSUANT TO THIS SECTION, A DEFENDANT MAY PETITION THE DISTRICT COURT IN THE JUDICIAL DISTRICT WHERE THE PERSON WAS ARRESTED FOR AN EXPUNGEMENT ORDER FOR THE ARREST AND CRIMINAL RECORDS CREATED AS A RESULT OF THE MISTAKEN IDENTITY. A petition filed pursuant to this subsection (1)(b) is not subject to a filing fee, AND AN ELIGIBLE DEFENDANT FILING FOR EXPUNGEMENT PURSUANT TO THIS SECTION MUST NOT BE CHARGED ANY OTHER FEES OR COSTS ASSOCIATED WITH EXPUNGING THE RECORD.

**SECTION 2.** In Colorado Revised Statutes, 24-72-703, **amend** (12)(d)(I); and **add** (2)(a)(IX), (12)(a)(III), and (13) as follows:

**24-72-703. Sealing of records - general provisions - order applicability - discovery and advisements.** (2) **Effect of a sealing order.** (a) (IX) A COURT

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*Capital letters or bold & italic numbers indicate new material added to existing law; dashes through words or numbers indicate deletions from existing law and such material is not part of the act.*

SHALL ALLOW A PERSON TO ACCESS A SEALED CRIMINAL JUSTICE RECORD IF THE PERSON AFFIRMS TO THE COURT, IN WRITING OR ELECTRONICALLY, THAT:

(A) THE PERSON IS AN ATTORNEY, OR IS ACTING ON BEHALF OF AN ATTORNEY;

(B) THE DEFENDANT IN THE UNDERLYING CRIMINAL CASE HAS GIVEN WRITTEN PERMISSION FOR THE PERSON TO ACCESS THE SEALED RECORD; AND

(C) THE PERSON IS ACCESSING THE RECORD FOR THE SOLE PURPOSE OF PROVIDING LEGAL ADVICE TO, OR EVALUATING WHETHER TO ENTER AN APPEARANCE ON BEHALF OF, THE DEFENDANT WHO GAVE PERMISSION FOR THE PERSON TO ACCESS THE RECORD.

(12) **Exclusions.** (a) (III) IF A DEFENDANT IS CONVICTED OF AN OFFENSE IN THE SAME CASE IN WHICH THE DEFENDANT SUCCESSFULLY COMPLETED A DEFERRED JUDGMENT, RECORDS OF THE DEFERRED JUDGMENT ARE ELIGIBLE FOR SEALING WHEN THE CRIMINAL CASE IN WHICH THE CONVICTION WAS ENTERED IS ELIGIBLE FOR SEALING PURSUANT TO THE PROVISIONS OF THIS PART 7, UNLESS THE DEFERRED JUDGMENT IS INELIGIBLE FOR SEALING PURSUANT TO SECTION 24-72-703(12)(d).

(d) Sealing is not available for:

(I) Records pertaining to a deferred judgment and sentence concerning TRAFFIC CONTROL LAWS RELATED TO 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

(13) **Remote participation.** FOR ANY MOTION FILED TO SEAL CRIMINAL JUSTICE RECORDS:

(a) THE COURT SHALL ALLOW THE DEFENDANT, THE PROSECUTION, THE NAMED VICTIM, AND ANY WITNESS TO APPEAR IN PERSON OR REMOTELY BY PHONE OR VIDEO ON A PLATFORM DESIGNATED BY THE COURT AT ANY HEARING OR OTHER COURT PROCEEDING. EITHER PARTY, THE NAMED VICTIM, AND ANY WITNESS MAY ELECT TO CHANGE HOW THE PARTY OR WITNESS INTENDS TO PARTICIPATE BY CONTACTING THE COURT; EXCEPT THAT, IF A PARTY, NAMED VICTIM, OR WITNESS CONTACTS THE COURT WITHIN FORTY-EIGHT HOURS BEFORE THE SCHEDULED APPEARANCE, THE COURT HAS DISCRETION WHETHER TO APPROVE THE PARTY'S OR WITNESS'S REQUESTED CHANGE IN PARTICIPATION.

(b) THE COURT SHALL COMPLY WITH ANY FEDERAL OR STATE LAW OR REGULATION, INCLUDING ANY SUPREME COURT DIRECTIVE OR POLICY, REGARDING THE PROVISION OF ACCOMMODATIONS FOR PEOPLE WITH A DISABILITY OR FOR PEOPLE WITH LIMITED ENGLISH PROFICIENCY DURING ANY PROCEEDING, REGARDLESS OF WHETHER THE PROCEEDING IS CONDUCTED IN PERSON OR REMOTELY BY PHONE OR VIDEO ON A PLATFORM DESIGNATED BY THE COURT.

(c) IN THE EVENT A PARTY IS DISCONNECTED OR THERE IS A TECHNOLOGY FAILURE, THE COURT SHALL MAKE ALL REASONABLE EFFORTS TO CONTACT THE PARTY AND SHALL ALLOW THE PARTY REASONABLE TIME TO REESTABLISH CONNECTION WITH THE COURT. IF THE PARTY IS UNABLE TO REESTABLISH

CONNECTION, THE COURT SHALL RESCHEDULE THE HEARING, TO BE HELD IN PERSON OR REMOTELY BY PHONE OR VIDEO ON A PLATFORM DESIGNATED BY THE COURT, FOR THE FIRST AVAILABLE DATE AFTER THE DATE OF THE ORIGINALLY SCHEDULED HEARING, BUT NO LATER THAN ONE WEEK AFTER THE ORIGINALLY SCHEDULED HEARING, TO THE EXTENT PRACTICABLE.

**SECTION 3.** In Colorado Revised Statutes, 24-72-704, **add** (1.5) as follows:

**24-72-704. Sealing of arrest records when no charges filed - automatic sealing.** (1.5) (a) ON ITS OWN MOTION, THE COURT SHALL ORDER THE DEFENDANT'S CRIMINAL JUSTICE RECORDS SEALED WHEN THE DISTRICT ATTORNEY NOTIFIES THE COURT THAT A PERSON IN INTEREST MEETS ONE OF THE CONDITIONS OF SUBSECTION (1) OF THIS SECTION TO FACILITATE SEALING OF THE RECORDS HELD BY THE COURT.

(b) THE COURT SHALL NOT REQUIRE A WRITTEN MOTION OR ANY OTHER WRITTEN PLEADINGS FOR SEALING PURSUANT TO THIS SECTION. THE COURT SHALL ENTER AN ORDER SEALING RECORDS PURSUANT TO THIS SUBSECTION (1.5) AT THE TIME OF NOTICE AND SHALL SERVE THE SEALING ORDER PURSUANT TO SECTION 24-72-703 (8) NO LATER THAN TWENTY-EIGHT DAYS AFTER THE DATE OF SEALING.

(c) IF THE AUTOMATIC SEALING OF A CRIMINAL RECORD DOES NOT OCCUR, THE DEFENDANT MAY FILE A MOTION TO SEAL THE CRIMINAL CASE AT ANY TIME SUBSEQUENT TO THE DISTRICT ATTORNEY'S NOTICE THROUGH THE FILING OF A WRITTEN MOTION PURSUANT TO SUBSECTION (1) OF THIS SECTION. THE COURT SHALL NOT CHARGE OR ASSESS THE DEFENDANT ANY FEES OR COSTS ASSOCIATED WITH FILING A MOTION PURSUANT TO THIS SUBSECTION (1.5)(c).

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

**SECTION 4.** In Colorado Revised Statutes, 24-72-705, **amend** (1)(d); and **add** (1)(g) and (3) as follows:

**24-72-705. Sealing criminal justice records other than convictions - simplified process - applicability.** (1) (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 (1)(b.7);~~ the court shall allow the district attorney the opportunity to inform the victim that the record will be sealed. ~~and~~ IF THERE IS AN OBJECTION BY THE VICTIM, THE DISTRICT ATTORNEY SHALL NOTIFY THE COURT AND THE COURT shall set a return date for the sealing motion no later than ~~forty-two~~ THIRTY-FIVE days after receipt of the motion. IF A RETURN DATE IS SET, THE DEFENDANT IS NOT REQUIRED TO APPEAR. IF THERE IS NO OBJECTION WITHIN THIRTY-FIVE DAYS AFTER THE MOTION IS FILED, THE COURT SHALL GRANT THE MOTION.

(g) CHARGES THAT ARE DISMISSED PURSUANT TO SECTION 16-8.5-116 ARE NOT ELIGIBLE FOR SEALING.

(3) NOTWITHSTANDING THE PROVISIONS OF ANY SECTION TO THE CONTRARY, WHEN A DEFENDANT HAS A NON-CONVICTION RECORD THAT IS INELIGIBLE FOR

SEALING BECAUSE THE DEFENDANT WAS CONVICTED OF A TRAFFIC OFFENSE IN THE SAME CASE, THE DEFENDANT MAY FILE A MOTION TO SEAL THE RECORD THROUGH THE PROCEDURES SET FORTH IN SUBSECTION (2) OF THIS SECTION.

**SECTION 5.** In Colorado Revised Statutes, 24-72-706, **amend** (1)(i) and (2)(b); and **repeal** (1)(f.5) as follows:

**24-72-706. Sealing of criminal conviction and criminal justice records - processing fee.** (1) **Sealing of conviction records.** (f.5) ~~(f) Notwithstanding any provision of this part 7 to the contrary, a motion filed for the sealing of conviction records for an offense that was unlawful at the time of conviction, but is no longer unlawful pursuant to section 18-18-434, may be filed at any time. The court shall order the records sealed unless the district attorney objects pursuant to subsection (1)(f.5)(II) of this section.~~

~~(H) If a motion is filed for the sealing of an offense described in this subsection (1)(f.5), the defendant shall provide notice of the motion to the district attorney, who may object. The district attorney shall determine whether to object to the motion based on whether the underlying conviction for an offense is no longer unlawful pursuant to section 18-18-434. The district attorney shall determine whether to object and provide notice to the court within forty-two days of receipt of the motion. If the district attorney objects to the motion, the court shall set the matter for hearing and the burden is on the defendant to show by a preponderance of the evidence that the underlying factual basis of the conviction sought to be sealed is no longer unlawful pursuant to section 18-18-434.~~

~~(III) (A) A defendant who files a motion pursuant to this subsection (1)(f.5) must not be charged fees or costs.~~

~~(B) Notwithstanding subsection (1)(c) of this section, a defendant who files a motion pursuant to this subsection (1)(f.5) is not required to submit a verified copy of the defendant's criminal history with a filed motion.~~

~~(C) Section 24-72-703 (2)(a)(V) does not apply to conviction records sealed pursuant to this subsection (1)(f.5).~~

(i) The court shall determine eligibility of a drug offense committed before October 1, 2013, by the classification of the offense at the time of considering the record sealing, INCLUDING, BUT NOT LIMITED TO, SECTION 18-18-106 (8)(a)(II)(B), AS IT EXISTED PRIOR TO JULY 1, 1992; OR SECTION 18-18-406 (8)(a)(II)(B), AS IT EXISTED PRIOR TO AUGUST 11, 2010; OR SECTION 18-18-406 (6)(a)(II)(B), AS IT EXISTED PRIOR TO OCTOBER 1, 2013.

(2) (b) Notwithstanding the provisions of this section, a misdemeanor OR PETTY 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.

**SECTION 6.** In Colorado Revised Statutes, 24-72-709, **amend** (1)(a) as follows:

**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~~ MOTION 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~~ MOTION 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~~ MOTION in each jurisdiction with a conviction record that includes a copy of each ~~petition~~ MOTION filed in the other jurisdictions and provide notice of the ~~petition~~ MOTION to each district attorney. IF THE CONVICTION RECORDS ARE IN THE SAME JURISDICTION, THE DEFENDANT MAY FILE A MOTION TO SEAL ALL CONVICTION RECORDS IN A SINGLE CASE, AND THE DEFENDANT SHALL IDENTIFY THE OTHER CONVICTION RECORDS BY CASE NAME AND NUMBER IN THE MOTION.

**SECTION 7.** In Colorado Revised Statutes, **add** 24-72-711 as follows:

**24-72-711. Record sealing - change in the law - conduct no longer prohibited.** (1) PURSUANT TO THE TIMELINES IN THIS SUBSECTION (1), IF A STATUTORY CHANGE LEGALIZES PREVIOUSLY PROHIBITED CONDUCT, A DEFENDANT MAY FILE A MOTION IN ANY CASE IN WHICH A CONVICTION RECORD EXISTS PERTAINING TO THE DEFENDANT'S CONVICTION FOR AN OFFENSE THAT IS NO LONGER PROHIBITED BY STATUTE AND PROVIDE NOTICE OF THE MOTION TO THE DISTRICT ATTORNEY. A DEFENDANT MAY FILE THE MOTION AFTER THE DATE OF THE FINAL DISPOSITION AGAINST THE DEFENDANT OR THE DATE OF THE DEFENDANT'S RELEASE FROM SUPERVISION, WHICHEVER IS LATER.

(2) A DEFENDANT WHO MAKES A MOTION TO HAVE THE DEFENDANT'S CRIMINAL RECORDS SEALED PURSUANT TO THIS SECTION IS NOT REQUIRED TO PAY ANY FEES OR COSTS ASSOCIATED WITH SEALING THE RECORD.

(3) THE DISTRICT ATTORNEY MAY ONLY OBJECT TO THE SEALING OF A RECORD PURSUANT TO THIS SECTION IF THE DISTRICT ATTORNEY HAS A GOOD-FAITH BELIEF THAT THE OFFENSE THE DEFENDANT IS SEEKING TO SEAL IS ILLEGAL AT THE TIME THE MOTION TO SEAL IS MADE. IF THE DISTRICT ATTORNEY DOES NOT OBJECT WITHIN FORTY-TWO DAYS AFTER THE DATE OF THE MOTION TO SEAL THE RECORD, THE COURT SHALL ORDER THE RECORD SEALED REGARDLESS OF OTHER CONVICTIONS ON THE DEFENDANT'S RECORD.

(4) NOTWITHSTANDING THE PROVISIONS OF SECTION 24-72-706 (1)(c), A DEFENDANT WHO FILES A MOTION PURSUANT TO THIS SECTION SHALL NOT BE REQUIRED TO SUBMIT A VERIFIED COPY OF THE DEFENDANT'S CRIMINAL HISTORY WITH THE MOTION. SECTION 24-72-703 (2)(a)(V) DOES NOT APPLY TO CONVICTION RECORDS SEALED PURSUANT TO THIS SECTION.

**SECTION 8.** In Colorado Revised Statutes, 13-3-117, **amend** (3)(b)(II); and **add** (5) as follows:

**13-3-117. State court administrator - automatic conviction sealing.**

(3) (b) (II) The district court shall send a copy of the sealing order to the district attorney's office that prosecuted the case to facilitate sealing of the records held by the district attorney's offices. The court shall also send a copy to the state court administrator for purposes of subsections (3)(b)(III) and (3)(c) of this section. TO PROTECT DEFENDANT CONFIDENTIALITY, A COPY SHALL NOT BE MAILED TO THE DEFENDANT, NOTWITHSTANDING ANY COLORADO CRIMINAL RULE OF PROCEDURE TO THE CONTRARY.

(5) (a) ON OR BEFORE JULY 1, 2025, THE STATE COURT ADMINISTRATOR SHALL COMPILE A LIST OF ALL CRIMINAL JUSTICE RECORDS OF DEFERRED JUDGMENTS THAT HAVE BEEN SUCCESSFULLY COMPLETED AND THE CHARGES HAVE BEEN DISMISSED, ACQUITTALS, AND DIVERSION CASES PURSUANT TO SECTION 24-72-705 (1)(a) WITH DISPOSITIONS PRIOR TO AUGUST 2022. THE STATE COURT ADMINISTRATOR SHALL SORT THOSE CRIMINAL JUSTICE RECORDS BY JUDICIAL DISTRICT AND SEND THE FINAL LIST TO THE CHIEF JUDGE OF EACH JUDICIAL DISTRICT.

(b) (I) THE STATE COURT ADMINISTRATOR SHALL SEND THE FINAL LIST COMPILED PURSUANT TO SUBSECTION (5)(a) OF THIS SECTION TO THE CHIEF JUDGE FOR THE JUDICIAL DISTRICT. THE COURTS OF THAT JUDICIAL DISTRICT SHALL ENTER SEALING ORDERS BASED ON THE LIST RECEIVED WITHIN FOURTEEN DAYS AFTER RECEIPT OF THE FINAL LIST FROM THE STATE COURT ADMINISTRATOR.

(II) THE DISTRICT COURT SHALL SEND A COPY OF THE SEALING ORDER TO THE DISTRICT ATTORNEY'S OFFICE THAT PROSECUTED THE CASE, AND UPON RECEIPT OF THE ORDER THE DISTRICT ATTORNEY'S OFFICE SHALL SEAL THE RECORDS HELD BY IT. THE COURT SHALL ALSO SEND A COPY TO THE STATE COURT ADMINISTRATOR FOR PURPOSES OF SUBSECTION (5)(b)(III) OF THIS SECTION. TO PROTECT DEFENDANT CONFIDENTIALITY, A COPY SHALL NOT BE MAILED TO THE DEFENDANT, NOTWITHSTANDING ANY COLORADO CRIMINAL RULE OF PROCEDURE TO THE CONTRARY.

(III) THE STATE COURT ADMINISTRATOR SHALL ELECTRONICALLY SEND ALL ORDERS SEALING RECORDS PURSUANT TO THIS SUBSECTION (5)(b) TO THE COLORADO BUREAU OF INVESTIGATION USING AN INFORMATION-SHARING DATA TRANSFER. UPON RECEIPT OF THE ORDERS, THE COLORADO BUREAU OF INVESTIGATION SHALL SEAL ALL RECORDS HELD BY THE ORDERS.

(IV) THE DEFENDANT MAY OBTAIN A COPY OF THE SEALING ORDER PURSUANT TO SECTION 24-72-703 (2)(c) AND SERVE THE SEALING ORDER ON ANY CUSTODIAN OF THE RECORDS PURSUANT TO SECTION 24-72-703 (8), INCLUDING THE LAW ENFORCEMENT AGENCY THAT INVESTIGATED THE CASE.

**SECTION 9.** In Colorado Revised Statutes, 16-8.5-116, **repeal** (12) as follows:

**16-8.5-116. Certification - reviews - termination of proceedings - rules.**

(12) ~~If charges against a defendant are dismissed pursuant to this section, such charges are not eligible for sealing pursuant to section 24-72-705.~~

**SECTION 10. Act subject to petition - effective date.** This act takes effect July 1, 2025; 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 2024 and, in such case, will take effect on July 1, 2025, or on the date of the official declaration of the vote thereon by the governor, whichever is later.

Approved: June 4, 2024