

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 (1)(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.

(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.

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 24-72-709.

(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 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) (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 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.

(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).
