

24-72-706. Sealing of criminal conviction records

(1) Sealing of conviction records. (a) Subject to the limitations described in subsection (2) of this section, a defendant may file a motion in the criminal case in the court in which any conviction records pertaining to the defendant are located for the sealing of the conviction records, except basic identification information, if the motion is filed within the time frame described in subsection (1)(b) of this section and proper notice is given to the district attorney.

(b)

(I) If the offense is a petty offense or a drug petty offense, the motion may be filed one year after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(II) If the offense is a class 2 or class 3 misdemeanor or any drug misdemeanor, the motion may be filed two years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(III) If the offense is a class 4, class 5, or class 6 felony, a level 3 or level 4 drug felony, or a class 1 misdemeanor, the motion may be filed three years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(IV) Subject to the limitations in subsection (2) of this section, for all other offenses, the petition may be filed five years after the later of the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction.

(c) A motion to seal conviction records pursuant to this section shall include a listing of each custodian of the records to whom the sealing order is directed and any information that accurately and completely identifies the records to be sealed. The defendant shall submit a verified copy of the defendant's criminal history, current through at least the twentieth day before the date of the filing of the petition to the court, along with the motion at the time of filing, but in no event later than the tenth day after the motion is filed. The defendant shall pay for his or her criminal history record.

(d) Upon the filing of any motion pursuant to this section, the court shall initially review the motion and determine whether there are grounds pursuant to this section to proceed to a hearing on the motion. If the court determines that the motion on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the motion, the defendant is not entitled to relief pursuant to this section, the court shall enter an order denying the motion and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the motion. If the court determines that the motion is sufficient on its face and that no other grounds exist at that time for the court to deny the motion pursuant to this section, the court shall proceed pursuant to the provisions of this section.

(e) Conviction records may 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 conviction records, unless the court that entered the order for restitution, fines, court costs, late fees, or other fees vacated the order.

(f)

(I) If a motion is filed for the sealing of a petty offense or a petty drug offense, the court shall order that the records be sealed after the motion is filed and the criminal history filed with the court documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later.

(II) If a motion is filed for the sealing of a class 2 or class 3 misdemeanor or any drug misdemeanor, the defendant shall provide notice of the motion to the district attorney. The district attorney shall determine whether to object to the motion after considering the factors in subsection (1)(g) of this section. If the district attorney does not object and the offense is not a crime enumerated in section 24-4.1-302 (1), the court shall order that the records be sealed if the criminal history filed with the court documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The district attorney shall advise the court of a victim's objection and request for hearing when known. If the district attorney objects to the motion or the offense is a crime enumerated in section 24-4.1-302 (1) and the victim requests a hearing, the court shall set the matter for hearing. The court may only seal the records if the criminal history filed with the motion as required by subsection (1)(c) of this section documents to the court that the

defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the motion after considering the factors in subsection (1)(g) of this section.

(III) If a motion is filed for the sealing of a class 4, class 5, or class 6 felony, a level 3 or level 4 drug felony, or a class 1 misdemeanor, the defendant shall provide notice of the motion to the district attorney. The district attorney shall determine whether to object to the motion after considering the factors in subsection (1)(g) of this section. If the district attorney does not object and the offense is not a crime enumerated in section 24-4.1-302 (1), the court may grant the motion with or without the benefit of a hearing. The district attorney shall advise the court of a victim's objection and request for hearing when known. If the district attorney objects to the motion or the offense is a crime enumerated in section 24-4.1-302 (1) and the victim requests a hearing, the court shall set the matter for hearing. The court may only seal the records if the criminal history filed with the motion as required by subsection (1)(c) of this section documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the motion after considering the position of the district attorney and the factors in subsection (1)(g) of this section.

(IV) If a motion is filed for any other offense, the defendant shall provide notice of the petition to the district attorney. The district attorney shall determine whether to object to the motion after considering the factors in subsection (1)(g) of this section. The court shall set any motion filed for a hearing. The court may only seal the records if the criminal history filed with the motion as required by subsection (1)(c) of this section documents to the court that the defendant has not been convicted of a criminal offense since the date of the final disposition of all criminal proceedings against him or her or since the date of the defendant's release from supervision, whichever is later. The court shall decide the motion after consideration of the position of the district attorney and the factors in subsection (1)(g) of this section.

(g) At any hearing to determine whether records may be sealed, except for basic identification information, the court must determine that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining public access to the conviction records. In making this determination, the court shall, at a minimum, consider the severity of the offense that is the basis of the conviction records sought to be sealed, the criminal history of the defendant, the number of convictions and dates of the convictions for which the defendant is seeking to have the records sealed, and the need for the government agency to retain the records.

(h) A defendant who files a motion to seal criminal justice conviction records 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. The defendant shall pay to the Colorado bureau of investigation any costs related to the sealing of his or her criminal conviction records in the custody of the bureau.

(2) (a) The provisions of this section do not apply to records pertaining to:

(I) A class 1 or class 2 misdemeanor traffic offense;

(II) A class A or class B traffic infraction;

(III) A conviction for a violation of section 42-4-1301 (1) or (2);

(IV) A conviction for an offense for which the underlying factual basis involved unlawful sexual behavior as defined in section 16-22-102 (9);

(V) A conviction for a violation of section 18-6-401; or

(VI) A conviction that is subject to one or more of the following provisions:

(A) Sentences for a crime involving extraordinary aggravating circumstances pursuant to section 18-1.3-401 (8);

(B) A sentence for an extraordinary risk crime pursuant to section 18-1.3-401 (10);

(C) Sentencing for a crime involving a pregnant victim, pursuant to section 18-1.3-401 (13);

(D) Sentencing for a crime pertaining to a special offender pursuant to section 18-18-407;

(E) Sentencing for a criminal conviction for which the underlying factual basis involves domestic violence as defined in section 18-6-800.3;

(F) Sentencing for a criminal conviction for a sexual offense, pursuant to part 4 of article 3 of title 18;

(G) Sentencing for any crime of violence pursuant to section 18-1.3-406;

(H) Sentencing for a felony crime enumerated in section 24-4.1-302 (1);

(I) Sentencing for a felony offense in violation of section 18-9-202;

(J) Sentencing for an offense classified as a class 1, 2, or 3 felony or a level 1 drug felony pursuant to any section of title 18;

(K) Sentencing for an offense in violation of part 1 of article 6 of title 18;

(L) Sentencing for an offense in violation of section 18-5-902 (1);

(M) Sentencing for an offense in violation of section 18-3.5-103 (4), (5), (6), (7), (8), and (9); or

(N) Sentencing for an offense in violation of section 18-7-203.

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

(c) This section does not apply to records that are subject to the procedure set forth in section 18-13-122 (13).

(3) **Applicability.** Motions filed pursuant to this section are procedural in nature, and sealing pursuant to this section applies retroactively to all eligible cases.

24-72-708. Sealing of criminal conviction records information for municipal offenses for convictions

(1) **Sealing of conviction records.** (a) (I) A defendant may file a motion in which any conviction records pertaining to the defendant for a municipal violation are located for the sealing of the conviction records, except basic identification information, if:

(A) The motion is filed three or more years after the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision concerning a criminal conviction, whichever is later; and

(B) The defendant has not been charged or convicted of a felony, misdemeanor, or misdemeanor traffic offense in the three or more years since the date of the final disposition of all criminal proceedings against him or her or the date of the defendant's release from supervision, whichever is later; and

(C) The conviction records to be sealed are not for a misdemeanor traffic offense committed either by a holder of a commercial learner's permit or a commercial driver's license, as defined in section 42-2-402, or by the operator of a commercial motor vehicle, as defined in section 42-2-402.

(II) Notwithstanding the provisions of subsection (1)(a)(I)(B) of this section, a defendant may petition the district court of the district in which any conviction records pertaining to the defendant for a municipal violation, except a municipal assault or battery offense in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1), or any other municipal violation in which the underlying factual basis involves domestic violence, as defined in section 18-6-800.3 (1), or petty offense are located for the sealing of the conviction records, except basic identification information, if:

(A) The defendant was convicted of a single offense that was not a felony and did not involve domestic violence as defined in section 18-6-800.3 (1), unlawful sexual behavior as defined in section 16-22-102 (9), or child abuse as defined in section 18-6-401;

(B) That offense occurred within three years of the date of the final disposition of all criminal proceedings against him or her related to the conviction that the defendant is seeking to have sealed or within three years of the date of the defendant's release from supervision related to the conviction that the defendant is seeking to have sealed, whichever is later; and

(C) The defendant has not been convicted of a felony, misdemeanor, or misdemeanor traffic offense in the ten or more years since the date of the final disposition of all criminal proceedings against him or her for the subsequent criminal case or in the ten or more years since the date of the defendant's release from supervision for the subsequent case, whichever is later.

(b) Upon filing the petition, the defendant shall pay the filing fee required by law.

(2) (a) Upon the filing of a motion, the court shall review the motion and determine whether there are grounds pursuant to this section to proceed to a hearing on the petition. If the court determines that

the motion on its face is insufficient or if the court determines that, after taking judicial notice of matters outside the motion, the defendant is not entitled to relief pursuant to this section, the court shall enter an order denying the motion and mail a copy of the order to the defendant. The court's order shall specify the reasons for the denial of the motion.

(b) If the court determines that the petition is sufficient on its face and that no other grounds exist at that time for the court to deny the petition pursuant to this section, the court shall set a date for a hearing and the court shall notify by certified mail the prosecuting attorney, the arresting agency, and any other person or agency identified by the defendant.

(3) After the hearing described in subsection (2) of this section is conducted and if the court finds that the harm to the privacy of the defendant or the dangers of unwarranted, adverse consequences to the defendant outweigh the public interest in retaining public access to the conviction records, the court may order the conviction records, except basic identification information, to be sealed. In making this determination, the court shall, at a minimum, consider the factors in section 24-72-706 (1)(g).