



SEALING CRIMINAL RECORDS

Presented by the 12th Judicial District Access to
Justice Committee



What Does it Mean to Have a Record Sealed?

- A Record that is sealed is no longer accessible to the public
 - *Any Agency who has the record must answer "No such record exists with respect to such person, " to inquiries except ... by criminal justice agencies*
- The record is NOT destroyed and remains available to criminal justice agencies, the court, and the District Attorney
 - *If your record is sealed and you are convicted again, your previous record may be unsealed by the court and/or available to the court, probation, and the District Attorney in sentencing*
 - *Sealing a conviction does NOT vacate the conviction*

Sealing a Record Requires Action and Not Everyone is Eligible

- Contrary to popular belief, your record does not go away automatically after the passage of time or when your case is dismissed
 - *The procedures differ depending on the type of record, but all require you to take at least some action*
- Eligibility is limited under the law
 - *More types of adult convictions are now eligible to be sealed than before.*
 - *Eligibility and process for having your record sealed is specifically defined by statute.*
 - *They both can change if the legislature decides to make changes (this happened in August of 2019)*
 - *However certain types of records are almost never eligible, such as records involving sexual assault.*

What to expect from this clinic...

- Topics covered in this presentation:
 - *Sealing a Case – Simplified Process*
 - *Sealing Arrest and Criminal Records*
 - *Sealing Municipal Conviction Record*
 - *Sealing Underage Alcohol or Marijuana Convictions*
 - *Sealing Criminal Conviction*
- Topics NOT covered in this presentation:
 - *Expungement of Juvenile Records*
 - *Appeals, Writs, and Challenges to the Underlying Conviction*
 - *Sex Offender De-Registration Process*
 - *Petition for Relief from Collateral Consequences*

For more information on topics not covered here today, you can consult with an attorney, go to www.courts.state.co.us and/or contact the Self-Help Coordinator, Kaylene Guymon at 589-7621 or

12selfhelp@judicial.state.co.us

Sealing Criminal Justice Records Simplified Process

See C.R.S. § 24-72-705

- In General:
- A motion gets filed into the case in the county where the criminal record exists.
- A motion can be filed once every twelve-month period.
- A Filing Fee of \$65 is required.
 - *If you are low income, you can file a motion to file without payment. You will need to file form JDF 205 along with proof of income.*

Sealing Criminal Justice Records

Simplified Process Continued

- In order to qualify to have your record sealed, you must meet one of the requirements:
 - You were acquitted of all counts in the case
 - Your case was completely dismissed
 - You completed a diversion agreement. See C.R.S § 18-1.3-101
 - You completed a deferred judgment and sentence and all counts have been dismissed. See C.R.S § 18-1.3-102.

However, even if you meet the above requirements, you cannot have your record sealed if: you still owe restitution, fines, court costs, and/or late fees

NOTE: If your case was dismissed as part of a plea agreement in another case, you cannot ask to have the dismissed case sealed until the case in which you pled guilty would be eligible to be sealed. See C.R.S. 24-72-703(12)(II)

Simplified Process Continued

- Other criminal records that cannot be sealed:
 - *The only charge(s) is/are class 1 misdemeanor traffic offenses, class 2 misdemeanor traffic offenses, class A traffic infractions, and/or class B traffic infractions*
 - *Deferred judgment and sentence for an offense for which the factual basis involved unlawful sexual behavior (C.R.S § 16-22-102(9))*
 - *Deferred judgment and sentence for an offense concerning the holder of a commercial driver's license, or operator of a commercial motor vehicle (C.R.S § 42-2-402)*
 - *Underage alcohol, marijuana, and paraphernalia offenses per C.R.S § 18-13-122*
 - *Charges that were dismissed pursuant to C.R.S § 16-8.5-116*

Simplified Process Continued

- Step 1: Complete the Forms
 - *Motion to Seal JDF 477 – complete entire form.*
 - *Proposed Orders JDF 492, JDF 478, JDF493 – Complete only the caption of these forms.*
- Step 2: File into the existing case
 - *Pay \$65 filing fee or (if low income) complete Motion to Waive Filing Fee with forms JDF 205 and JDF 206*
- Step 3: Court will Review Motion
 - *Options: the court will either deny the motion, grant the motion or set for hearing.*

Simplified Process Continued

- If Applicable
- Step 4: Be prepared for Hearing:
 - *If hearing is set, be prepared to answer questions regarding your request to have your case sealed.*
 - *At the hearing, the District Attorney and victim in the case will be given the opportunity to appear and participate as well.*
- Step 5: Notify Agencies including CBI
 - *If the court grants your motion to seal your case, **it is your responsibility** to notify all agencies including Colorado Bureau of Investigation (Note: there will be a fee to CBI to seal the record(s))*
 - *Your failure to notify may result in the criminal record not being sealed*

Sealing Adult
Records - Arrest and
Records Other than
Convictions When No
Charges Filed
See C.R.S 24-72-704

- In General:
- A Petition may be filed in the county where the arrest occurred.
- A separate District Civil Case will opened.
- A Filing Fee of \$224 is required. If you are low income you can file a motion to file without payment (form JDF 205).

Sealing Adult Records – Arrest and Records Other than Convictions When No Charges Filed

- In order to qualify to have your criminal record sealed, you must meet one of the following requirements:
 - You completed a diversion agreement and no criminal charges were ever filed see C. R. S 18-1.3-101
 - You have an arrest record, but you were not charged in court and the statute of limitations has run
 - You have an arrest record, but you were not charged in court, the statute of limitations has not run and you are no longer being investigated by law enforcement for the offense.
- **NOTE: If no charges were filed as part of a plea agreement in another case, you cannot ask to have the dismissed case sealed until the case in which you pled guilty would be eligible to be sealed. See C.R.S. 24-72-703(12)(II)**

Sealing Adult Records – Arrest and Records Other Than Convictions Continued

- Step 1: Gather Information
 - Court Records (if any)
 - Municipal Court Records (if any)
 - Arrest or Police Records
 - Colorado Bureau of Investigation (CBI) Report
<https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>
- Will help with accuracy of information of the arrest. (dates, agencies, case numbers, etc.)
- \$6.95 fee, immediate name based check

Sealing Adult Records – Arrest and Records Other Than Convictions Continued

- Step 2: Complete Forms
 - *Petition to Seal Arrest and Criminal Records When No Charges Filed JDF 417—Complete Entire Form*
 - *Proposed Orders JDF 418, JDF 435, JDF 419 – Complete Caption Only*
- Step 3: File New Case with the Courts
 - *Pay filing fee \$224 or (if low income) file motion to waive the filing fee, forms JDF 205 and JDF 206*

Sealing Adult Records – Arrest and Records Other Than Convictions Continued

- Step 4: Be prepared for Hearing:
 - *The Court may deny your request without a hearing if it finds based on the face of your petition that you are not eligible to have your record sealed.*
 - *If hearing is set be prepared to answer questions regarding your request to have your case sealed.*
 - *Before the hearing, the District Attorney and/or law enforcement may file an objection to your request. If no objections are filed, the Court shall vacate the hearing and grant your request.*
- Step 5: Notify Agencies including CBI
 - *If the court grants your motion to seal your case it is your responsibility to notify Colorado Bureau of Investigation (Note: there will be a fee to this agency to seal the record(s))*
 - *Your failure to notify may result in the criminal record not being sealed.*

Sealing of Criminal Conviction – Municipal Record

See C.R.S. 24-72-703
and C.R.S 24-72-708

- In General:
- A Petition may be filed in the county where the Municipal conviction record is located.
- The case will be opened as a new district court civil case.
- A Filing Fee of \$224 is required. If you are low income you can file a motion to file without payment

Sealing of Criminal Conviction - Municipal Record Continued

- You may file a Petition in the District Court in the County where the Municipal conviction exists if ALL of the following are true:
 - The Petition is filed three or more years after the final date of disposition or the release from supervision, whichever is later.
 - You have not been charged or convicted of a felony, misdemeanor, or misdemeanor traffic offense within the last three years. **
 - Your case is not for a misdemeanor traffic offense IF you have a commercial driver's license or permit or are an operator of a commercial vehicle (see C.R.S. 42-2-402 for definitions).

**See exception in next slide

Sealing of Criminal Conviction – Municipal Record Continued

- If you have had a conviction within three years from the final disposition/end of supervision for the municipal record you wish to seal, you may still be eligible if ALL of the following are true:
 - *The record you want sealed is not for municipal assault or battery involving domestic violence or any other municipal violation involving domestic violence.*
 - *Your subsequent conviction was a single offense that was not a felony and did not involve domestic violence (see C.R.S. 18-6-800.3(1)), unlawful sexual behavior (see C.R.S. 16-22-102 (9)), or child abuse (see C.R.S. 18-6-401).*
 - *You have not been convicted of a felony, misdemeanor, or misdemeanor traffic offense in the ten or more years since the date of final disposition of all criminal proceedings against you in the subsequent conviction or release from supervision in the subsequent conviction, whichever is later.*

Sealing of Criminal Conviction – Municipal Record Continued

- Step 1: Gather Information
 - Court Records (if any)
 - Municipal Court Records (if any)
 - Arrest or Police Records
 - Colorado Bureau of Investigation (CBI) Report
<https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>
- Will help with accuracy of information of the arrest. (dates, agencies, case numbers, etc.)
- \$6.95 fee, immediate name based check

Sealing of Criminal Conviction – Municipal Record Continued

- Step 2: Complete Forms
 - *Petition to Seal Criminal Conviction Municipal Records JDF 683—Complete Entire Form*
 - *Proposed Orders JDF 684, JDF 685, JDF 686 – Complete Caption Only*
- Step 3: File New Case with the Courts
 - *Pay filing fee \$224 or (if low income) file motion to waive the filing fee, forms JDF 205 and JDF 206*

Sealing of Criminal Conviction – Municipal Record Continued

- Step 4: Be prepared for Hearing (if one is set):
 - *If the Court finds that based on the fact of the petition, you are not eligible to have your record sealed, the Court may deny your request without a hearing.*
 - *If hearing is set be prepared to answer questions regarding your request to have your case sealed.*
 - *The Court is weighing your privacy interest and harm to you from the record against the public interest in keeping the record public.*
- Step 5: Notify Agencies including CBI
 - *If the court grants your motion to seal your case it is your responsibility to notify Colorado Bureau of Investigation (Note: there will be a fee to this agency to seal the record(s))*
 - *Your failure to notify may result in the criminal record not being sealed.*

Sealing Underage Alcohol/Marijuana Record

See C.R.S 18-13-122

- In General:
 - Called a *Petition to Seal* (not expunge)
 - No *filing fee*
 - Filed in same case as *original offense*
 - You *must have paid any/all court-ordered fines, costs, restitution, etc.*
 - Law *changed in 2014*
 - Prior to that date, only applied to underage alcohol; after that date, applied to both underage alcohol and underage marijuana
 - Also changed some of the procedure
 - For offenses committed prior to 7/1/2014, old law applies; for offenses committed on or after 7/1/2014, new law applies

Sealing Underage Alcohol/Marijuana Record Continued

- YOU MAY NOT NEED TO FILE A PETITION:
- If your offense was committed after 7/1/14 AND at least one of the following is true, then the court should have automatically ordered your record sealed:
 - If your case was dismissed
 - If you received a deferred sentence or diversion and were successful in the completion of all applicable terms and conditions
 - For a first-time conviction, after successful completion of the court-ordered substance abuse education and all fines paid

****All court costs or fines must be paid in full**

****You are still responsible for mailing copies of the Judge's order sealing your record to all applicable agencies (DA's office, all Law Enforcement offices involved, CBI, DMV)**

Sealing Underage Alcohol/Marijuana Record Continued

Offenses committed
before 7/1/2014

- At least one year has passed from the date of your conviction, dismissal of your case, completion of your deferred judgment, or the conclusion of your deferred prosecution, and
- During that 1 year, you have not been arrested for, charged with, or convicted of any felony, misdemeanor, or petty offense.

Offenses Committed on or
after 7/1/2014

- For second and subsequent offenses:
- At least one year has passed since the date of your conviction and
- You have not been arrested for, charged with, or convicted of any felony, misdemeanor, or petty offense during the one year period following the date of your conviction

Sealing Underage Alcohol/Marijuana Record Continued

- Step 1: Gather Information
 - Court Records
 - Arrest or Police Records
 - Colorado Bureau of Investigation (CBI) Report

<https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>

 - Will help with accuracy of information of the arrest. (dates, agencies, case numbers, etc.)
 - \$6.95 fee, immediate name based check

******This Criminal History must be conducted no more than 20 days before you file your Petition with the court

Sealing Underage Alcohol/Marijuana Record Continued

- Step 2: Complete Forms
 - *Petition to Seal Records Related to Illegal Possession or Consumption of Ethyl Alcohol or Marijuana by an Underage Person or Possession of Marijuana Paraphernalia – entire form must be completed*
 - JDF 313 (a) if offense was committed prior to July 1, 2014
 - JDF 313 (b) if offense was committed on or after July 1, 2014
 - *Proposed Orders - Complete Caption Only*
 - JDF 314 (a) if Offense was committed prior to July 1, 2014
 - JDF 314(b) if offense was committed on or after July1, 2014
- Step 3: File Petition in the case
 - *No Filing Fee*
 - *You must file a verified copy of your criminal history with your Petition or within 10 days after you file your Petition. This criminal history has to be current from no earlier than 20 days before the Petition is filed.*

Sealing Underage Alcohol/Marijuana Record Continued

- Step 4: Be prepared for Hearing (if applicable):
 - *If hearing is set be prepared to answer questions regarding your request to have your case sealed.*
- Step 5: Notify Agencies including CBI
 - *If the court grants your motion to seal your case it is your responsibility to notify Colorado Bureau of Investigation (Note: there will be a fee to this agency to seal the record(s))*
 - *Your failure to notify may result in the criminal record not being sealed.*

Sealing Criminal Convictions

See 24-72-701 through 708

- In General:
- A Motion can be filed into the case where the conviction occurred
- A Motion can be filed once every twelve-month period
- All restitution, fines, courts costs, late fees, or other fees must be paid in full or have been vacated by the court
- A \$65 fee is required or (if low income) a motion to waive the fee may be filed

Sealing Criminal Convictions – Not Eligible

C.R.S. 24-72-706(2)

THERE ARE MANY EXCLUDED CONVICTIONS:

Traffic Cases
Misdemeanors* or
infractions

Conviction for DUI,
DWA1, DUI Per Se*

Any class 1, 2 or 3
felony or level 1
drug felony

Conviction for child
abuse or any
wrongs to
children*

Conviction for
unlawful sexual
behavior, any
level*

Underlying factual
basis for Domestic
Violence*

Crime of Violence
§18-1.3-406

Extraordinary Risk
Crime

Conviction for a crime
involving extraordinary
aggravating
circumstances under
18-1.3-401(8)

Crime involving a
pregnant victim

Felony Conviction
listed in the
Victims Rights Act

Cruelty to
Animals*

Identity theft

Special Offender
under 18-18-407

Pandering

Sealing Criminal Convictions—Not Eligible Exception

- If your conviction is for a **misdemeanor** that falls into one of the categories that are not eligible for sealing, you may still be able to have your conviction sealed if:
 - *The District Attorney consents to the sealing; OR*
 - *The court finds, by clear and convincing evidence, that your need for sealing of the record is significant and substantial, the passage of time is such that the you are 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.R.S. 24-72-706(2)(b)

Sealing Criminal Convictions – Eligibility Time Frames

Petty Offenses
Drug Petty Offenses

1 year or more
after final
disposition

Class 2 Misdemeanors
Class 3 Misdemeanors
Any Drug Misdemeanor

2 Years or more
after final
disposition

Class 4 Felonies
Class 5 Felonies
Class 6 Felonies
Level 2 Drug Felonies
Level 4 Drug Felonies
Class 1 Misdemeanors

3 years or more
after final
disposition

All Other Offenses

5 years or more
after final
disposition

Offenses Committed by Victims of Human Trafficking: Any Time After Conviction

Sealing Criminal Convictions Continued

- Step 1: Gather Information
 - Court Records
 - Arrest or Police Records
 - Colorado Bureau of Investigation (CBI) Report
- <https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>
- Will help with accuracy of information of the arrest. (dates, agencies, case numbers, etc.)
 - \$6.95 fee, immediate name based check
- ***This Criminal History must be conducted no more than 20 days before you file your Petition with the court

Sealing Criminal Convictions Continued

- Step 2: Complete Forms
 - Motion to Seal Criminal Conviction Records JDF 612 – Complete the entire form
 - Proposed Orders JDF 613, JDF 614, JDF 615 – Complete caption of the form only
- Step 3: File Motion into the case
 - A \$65 fee is required or (if low income) a motion to waive the fee may be filed
 - You must file a verified copy of your criminal history with your Motion or no later than 10 days after you file your Motion. The criminal history must be current as of no earlier than 20 days before you file your Motion.

Sealing Criminal Convictions Continued

- Step 4: Be prepared for Hearing (if applicable):
 - You may be required to notify the District Attorney of your Motion.
 - If the Court finds that based on the face of your Motion, you are not eligible to have your record sealed, the Court may deny your request without a hearing.
 - If hearing is set be prepared to answer questions regarding your request to have your case sealed.
 - The District Attorney, law enforcement, and/or victim in your case may file an objection and/or may participate in the hearing.
 - The Court will be weighing your privacy interest and harm to you based on the conviction record against the public interest in keeping the information public.
- Step 5: Notify Agencies including CBI
 - If the court grants your motion to seal your case it is your responsibility to notify Colorado Bureau of Investigation (Note: there will be a fee to this agency to seal the record(s))
 - Your failure to notify may result in the criminal record not being sealed.

Forms...

- All forms and Proposed Orders are available at
 - *The Court Clerk's Office in the Courthouse*
 - *The Judicial Website at www.courts.state.co.us*
 - Click on the Self-Help/Forms tab
 - All Court Forms and Instructions
 - Seal My Case
- Click on the description of records you are trying to seal.

Other Resources

Colorado Legal Services

- (719)589-4993
- *Fill out application to see if you are eligible for services*

Colorado Bar Association

- to help find a private attorney
- (303)860-1115
- www.licensedlawyer.org/co

Self-Help Coordinator

- Cannot provide legal advice but can help with forms and explain process
- *Kaylene Guymon*
- (719)589-7621
- 12selfhelp@judicial.state.co.us

Panel Discussion:



- Panel Members:
 - Judge Cortez, Conejos County Court Judge
 - Tammy Sullivan, Colorado Legal Services
 - Kaylene Guymon, 12th Judicial District Self-Help Coordinator
- Moderated by:
 - Ronnie Mondragon, Law Clerk with 12th Judicial District
- <https://www.courts.state.co.us/>