



Colorado
Legislative
Council
Staff

Room 029 State Capitol, Denver, CO 80203-1784
(303) 866-3521 FAX: 866-3855 TDD: 866-

MEMORANDUM

September 11, 2012

TO: Interested Persons
FROM: Jessika Shipley, Senior Analyst, 303-866-3528
SUBJECT: Sealing Adult and Juvenile Criminal Records

This memorandum discusses Colorado law concerning the expungement of juvenile delinquency records, including the offenses that may not be expunged. It also covers the sealing of adult arrest records, criminal records other than convictions, and conviction records.

Expungement

Expungement applies only to juvenile delinquency records.¹ With an order of expungement from the court, an individual with a juvenile criminal record may indicate when asked that no criminal record exists. Expunged records may only be examined by an order of the court, after a hearing where good cause is shown. To enter an order to expunge all records in the custody of the court or any other agency, the court must find that:

- the petitioner has not been convicted of a crime and has not been adjudicated as a juvenile delinquent since the termination of the court's jurisdiction or the petitioner's unconditional release from parole supervision;
- there are no pending criminal or delinquency actions against the petitioner;²
- the rehabilitation of the petitioner has been attained to the satisfaction of the court; and
- expungement is in the best interests of the petitioner and the community.

Eligibility for expungement. An individual is eligible to petition for expungement:

- immediately upon a finding of not guilty;
- one year from the date of a law enforcement contact that did not result in a referral to another agency;
- one year from the completion of a juvenile diversion program or informal adjustment;
- four years from the date of:

¹Section 19-1-306, C.R.S.

²A delinquency action happens as the consequence of a violation of any statute, ordinance, or court order. Criminal actions refer only to violations of statutes and ordinances.

- ▶ the termination of court jurisdiction over the juvenile;
- ▶ the juvenile's unconditional release from commitment to the Department of Human Services; or
- ▶ the juvenile's unconditional release from parole supervision; *or*
- ten years from the date of the termination of court jurisdiction over the juvenile or the juvenile's unconditional release from parole supervision, whichever date is later, in cases in which the juvenile has been named a repeat or mandatory juvenile offender and the juvenile has not committed another crime.

Human trafficking. In 2012, the General Assembly enacted House Bill 12-1151 concerning human trafficking. The bill requires the court to expunge records pertaining to prostitution convictions when the petitioner can show that he or she was the victim of human trafficking at the time the offense was committed. A petition to expunge such records may be filed at any time following the conviction.

Exceptions. The following individuals are not eligible to petition for expungement, regardless of the amount of time that has passed since the commission of a crime:

- aggravated juvenile offenders;
- violent juvenile offenders;
- juveniles who committed a crime of violence;
- juveniles who were charged as adults; and
- juveniles who committed an offense involving unlawful sexual behavior.

Sealing of Arrest and Criminal Records Other Than Convictions

Applicability. Adult criminal records are sealed rather than expunged.³ Colorado law provides for the sealing of records of official actions involving a criminal offense (except for basic identification information) when:

- the individual was not charged with a crime;
- the case was dismissed; or
- the individual was acquitted.

Generally, records of criminal offenses that were not charged or were dismissed due to a plea agreement in a separate case may not be sealed. However, there are exceptions to this rule. A petition to seal the records of offenses that were not charged or were dismissed due to a plea agreement in a separate case may be filed ten years or more after the disposition of the case, provided the individual has not been charged for any criminal offense in the intervening ten years.

Consideration by the court. The court must consider the merits of the petition to determine whether a hearing regarding the sealing of records is warranted. At a hearing, the court may find that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records.

³Section 24-72-308, C.R.S.

Effect of an order to seal records. After an order to seal records has been entered and in response to any inquiry about the matter, the petitioner and all criminal justice agencies may legally respond that no such records exist.

Exclusions. The records described above may never 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 petition. Additionally, records of most motor vehicle offenses and sexual offenses may not be sealed. Finally, records of criminal activity cannot be sealed against other criminal justice agencies conducting an investigation.

Sealing of Criminal Conviction Records

Under limited circumstances, including offenses related to controlled substances, offenses related to human trafficking, and offenses related to theft of public transportation services, criminal conviction records may also be sealed. The process for sealing conviction records is similar to that of sealing other criminal records, except where noted.

For all conviction records that may be sealed, except those related to theft of public transportation services, an order sealing the records does not vacate a conviction or deny access to such records by any agency required by law to conduct a criminal background check. If the petitioner is convicted of a criminal offense after the entry of an order sealing conviction records, the court is required to unseal the original conviction records.

Offenses related to controlled substances between July 1, 2008 and June 30, 2011. For certain convictions that occurred between July 1, 2008, and June 30, 2001 (all petty drug offenses, all misdemeanor drug offenses, and class 5 and 6 felony drug offenses), a petition must be filed no less than ten years after:

- the final disposition of criminal proceedings against the petitioner; or
- the petitioner's release from supervision concerning a criminal conviction, whichever is later.⁴

Additionally, the petitioner may not have been charged or convicted of a criminal offense in the intervening ten years.

The petitioner may obtain a court order to seal records of convictions that occurred during this time period only if:

- the prosecuting attorney does not object to the sealing;
- the petitioner pays all reasonable attorneys fees and costs of the prosecuting attorney related to the petition to seal *prior to the entry of an order sealing the records*; and
- the petitioner pays all required filing fees related to the petition to seal.

⁴Section 24-72-308.5, C.R.S

Offenses related to controlled substances on or after July 1, 2011. In 2011, the General Assembly shortened some of the waiting periods for petitioning to seal certain drug conviction records with the enactment of House Bill 11-1167. The bill also expanded applicability to all felony drug offenses. Table 1 explains the amended time periods and procedures for sealing records of convictions that occurred on or after July 1, 2011.⁵

**Table 1
Petition Process to Seal Certain Drug Offense Records for Convictions
On or After July 1, 2011**

Type of Conviction	Waiting Period to File Petition*	Effect of District Attorney Objection	Court Procedure
Petty Offense	3 Years	Not solicited	The court shall seal the conviction record.
Class 2 and 3 Misdemeanor	3 Years	Hearing	If there is no DA objection, the court shall seal the record. If a hearing is held, the court may seal the record.
Class 1 Misdemeanor	5 Years	Hearing	If there is no DA objection, the court shall seal the record. If a hearing is held, the court may seal the record.
Class 5 and 6 Felonies	7 Years	Hearing	If there is no DA objection, the court may seal the record without hearing, or it may hold a hearing. The court may seal the record with or without a hearing.
Other Felonies	10 Years	Dismiss petition	A hearing is required if the petition is not dismissed. The court may seal the record after the hearing.

* The petition may be filed after the date of the final disposition of all criminal proceedings against the defendant or the release of the defendant from supervision, whichever is later.

The court will only order the sealing of records of drug-related convictions occurring after July 1, 2011, if the defendant can demonstrate that he or she has not been charged or convicted for a criminal offense since the date of the final disposition of court proceeding or his or her release from supervision, whichever is later.

Offenses related to human trafficking. The court is required to seal records of convictions for the offenses of prostitution, soliciting for prostitution, keeping a place of prostitution, and public indecency in cases where the following conditions have been met:

- a petition is filed;
- the filing fee is paid; and
- the petitioner shows by a preponderance of the evidence that, at the time he or she committed the offense, he or she had been coerced, sold, exchanged, bartered, or leased for the purpose of performing the act that precipitated the conviction.⁶

⁵Section 24-72-308.6, C.R.S.

⁶Section 24-72-308.7, C.R.S.

A petition to seal records of convictions related human trafficking may be filed once during any 12-month period. A second or subsequent petition filed within a 12-month period will be dismissed. The law does not require a waiting period between the time of the conviction and the filing of a petition.

Offenses related to theft of public transportation services. The court is required to seal all records of convictions for theft of public transportation services by fare evasion by January 1, 2013, provided that the person has completed his or her sentence, including payment of the prescribed fine and surcharge.⁷ A petition process exists for individuals who would like to have their conviction records sealed prior to January 1, 2013, and for those who have not completed their sentence prior to June 8, 2012 (when the law went into effect).

⁷Section 24-72-308.8, C.R.S.