

2021 Updates on Sealing Criminal Records

BY GORDON P. GALLAGHER

This article highlights the 2021 amendments to Colorado law on sealing criminal records.

A November 2020 *Colorado Lawyer* article focused on major changes to the statutes governing the sealing of criminal records that were codified in 2019.¹ This article discusses significant updates to those amendments enacted in Colorado HB 21-1214, which became effective September 7, 2021.² The changes impact generations of former defendants by offering them additional opportunities to seal criminal records and thus remove barriers to employment, housing, and economic security.

Highlights of the 2021 Changes

The 2021 statutory amendments include

- the ability to seal multiple convictions.³
- the ability to seal records after a “full and unconditional pardon.”⁴
- mandatory sealing when no charges are filed after arrest.⁵
- authorization for the Colorado State Public Defender (CSPD) and the Office of Alternate Defense Counsel (ADC) to accept gifts and donations to pay for sealing.⁶

Because a significant portion of former defendants was likely advised—correctly at the time—that they were ineligible to seal their convictions, practitioners should familiarize themselves with these new provisions and take reasonable steps to notify defendants who may be affected.

Sealing Multiple Convictions

Perhaps the most significant changes to the sealing statutes address the ability to seal multiple convictions. Formerly, an individual with multiple convictions could qualify to have the latest conviction sealed, but prior convictions would lose eligibility for sealing if the individual had any new convictions. Now, and depending on the conviction level, an individual can seal up to five eligible convictions.⁷ Consistent with

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sealing statutes generally, a graduated formula delineates how long a defendant must wait to petition for sealing after the later of the final disposition date in all criminal proceedings against the defendant or his or her release from supervision concerning the conviction, or the latest in time criminal conviction of multiple convictions. The formula also states the maximum number of convictions a defendant may have to be eligible for sealing, based on the severity of the crime. The CRS § 24-72-709(2) and (3) formula provides that a person with convictions must wait

- two years and must have no more than five convictions in separate criminal cases if the most serious offense is a petty offense.
- five years and must have no more than four convictions in separate criminal cases if the most serious offense is a misdemeanor, misdemeanor drug offense, or level 4 drug felony.
- 10 years and must have no more than three convictions in separate criminal cases if the most serious matter is a felony or drug felony.

Subsection (5) also lists records that are ineligible for sealing.

The defendant must provide notice of the sealing request to the district attorney, and CRS § 24-72-709(4) contains a procedure for the district attorney to object to the petition and request a hearing. If the records are in different jurisdictions, CRS § 24-72-709(1)(a) requires the defendant to “file a petition in each jurisdiction with a conviction record that includes a copy of each petition filed in the other jurisdictions and provide notice of the petition to each district attorney.”

The statute does not address what occurs if there is an intervening non-eligible offense (e.g., a misdemeanor DUI or domestic violence conviction) that falls between two or more convictions that can be sealed. For example, an individual might receive a felony conviction, then a misdemeanor conviction, and then another felony conviction where absent the intervening misdemeanor, both felonies might qualify for sealing. Under the prior sealing statutes, all convictions could have been ineligible except the most recent eligible felony, but it is possible

that the new provisions leave this open for the courts’ determination. Therefore, this scheme allows for mixed results because one court could grant a motion to seal and another deny a motion to seal on the same facts. Nevertheless, this new system offers life-changing opportunities for thousands of former defendants, particularly those who had multiple convictions at a young age but then moved on to a law-abiding life.

Sealing After Pardon

New CRS § 24-72-710 allows a defendant to petition to seal conviction records pertaining to the defendant’s conviction for any offenses that received a full and unconditional pardon. Notice to the district attorney is required, and the district attorney may object to the petition and request a hearing.

Mandatory Sealing when No Charges are Filed

For arrests on or after January 1, 2022, CRS § 24-72-704(2)(a) requires the Colorado Bureau of Investigation (CBI) to automatically seal the arrest records “in its custody and control” of persons when no criminal charges have been filed within one year of their arrest.⁸ Such records must be sealed within 60 days after the year has passed since the person’s arrest date.⁹ If the CBI receives notice of filed charges after sealing, it must immediately unseal the record.¹⁰

For arrests occurring before January 1, 2022, subsection (2)(b) provides staggered dates for sealing through January 1, 2027, presumably to allow CBI to assemble the resources to handle this huge task.

Subsections (3) and (5) allow access to sealed records for approved treatment providers and the Department of Education for specified purposes.

CSPD/ADC Fund

New CRS §§ 21-1-107 and -109 authorize both the CSPD and the ADC to “apply for grants and accept gifts or donations from private or public sources for the purpose of representing indigent clients” in sealing matters.¹¹ Donations may not be conditioned upon use for a particular individual.¹² The statute also creates a “sealing defense fund” in the State Treasury for receipt of all gifts, grants, or donations that these offices receive for this purpose.¹³

Based on the author’s conversations with involved individuals, the CSPD has submitted a proposal to a national nonprofit for funding and would like to start sealing matters under this statute this fiscal year. The ADC anticipates that if the CSPD uses contract attorneys rather than staff attorneys to handle sealing matters, few conflicts would arise requiring the ADC’s services. Thus, the plan is for the CSPD to proceed with seeking funds and for the ADC to monitor the situation and become involved at a later time if necessary.

Conclusion

The 2021 amendments offer former defendants the ability to seal certain records that were previously ineligible for sealing. Practitioners should familiarize themselves with the new provisions and take whatever steps are practicable to notify defendants of this opportunity. CL



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NOTES

1. Gallagher, “Sealing Criminal History Records for Convictions under CRS §§ 24-72-701 et seq.,” 49 *Colo. Law.* 32 (Nov. 2020), <https://cl.cobar.org/features/sealing-criminal-history-records-for-convictions-under-crs-%c2%a7%c2%a7-24-72-701-et-seq>.
2. HB 21-1214, Concerning Increased Eligibility for Procedures to Reduce Collateral Sanctions Experienced by Defendants, and, in Connection Therewith, Making an Appropriation.
3. CRS § 24-72-709.
4. CRS § 24-72-710.
5. CRS § 24-72-704.
6. CRS §§ 21-1-107 and 22-2-109.
7. CRS § 24-72-709(3)(a).
8. CRS § 24-72-704.
9. CRS § 24-72-704(2)(a).
10. *Id.*
11. CRS §§ 21-1-107(1) and -109(1).
12. *Id.*
13. CRS § 21-1-107(2).

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