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SEALING CRIMINAL JUSTICE RECORDS

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Most criminal justice records, including arrest records and court dispositions, are open to public inspection under Colorado law. In the past, someone who wanted to view another person's criminal record could do so only by traveling to the appropriate locale. With the proliferation of the Internet and electronic filing capabilities, many criminal records can now be accessed online. The convenience offered by electronic technology has thus expanded public access to criminal justice records. Colorado law allows criminal records to be sealed in certain situations. This *Issue Brief* discusses which adult and juvenile records can be sealed and how to petition for sealing them.

Background

Colorado law requires that all official actions¹ taken by a criminal justice agency be recorded and open to public inspection. The criminal justice agency that takes an action is responsible for maintaining the associated records. Colorado law also requires each criminal justice agency in the state to furnish to the Colorado Bureau of Investigation (CBI) all arrest, identification, and final charge dispositional information on persons arrested in the state for federal, state, or out-of-state criminal offenses, and on persons admitted to serve a sentence of incarceration. For a minimal fee, any person or employer may obtain criminal history information from the CBI's records check system and court case information from the Judicial Department's Integrated Colorado On-Line Network (ICON).

Sealing Adult Records

All information in a criminal justice record except basic identifying information² may be sealed if the person in question was acquitted, the charges were dismissed, or a decision was made not to file charges. In addition, records pertaining to an offense that was not charged due to a plea agreement in a separate case can be sealed 15 years after the last date of all criminal proceedings against the person who is the subject of the record, as long as no additional charges were filed against that person during the 15-year period. Records for a case that was dismissed as part of a plea agreement in a separate case may be sealed according to the same conditions. Courts are required to provide a written advisement of this right to defendants as long as they meet the criteria. Records pertaining to the following *cannot* be sealed: (1) a conviction for driving under the influence or driving while ability impaired; (2) a conviction of unlawful sexual behavior; (3) any class 1 or 2 misdemeanor traffic offense; and (4) any class A or B traffic infraction.

Effect. Once a court seals an adult record, it is treated as nonexistent for purposes of public information and inspection. If asked about a sealed record, the person who is the subject of the record and all criminal justice agencies may state that no such record exists. A job applicant cannot be required to disclose any information contained in sealed records and may state that no criminal action has ever occurred. The only people who can petition a court to view a sealed record are the person who is

1. "Official action" means an arrest; indictment; charge by a district attorney; disposition; pretrial or posttrial release from custody; judicial determination of mental or physical condition; decision to grant, order, or terminate probation, parole, or participation in a correctional or rehabilitative program; and any decision to formally discipline, reclassify, or relocate any person under a criminal sentence.

2. "Basic identification information" means the name, place and date of birth, last-known address, social security number, occupation and place of employment, physical description, photograph, handwritten signature, sex, fingerprints, and any known aliases.

the subject of the record in question, and the prosecuting attorney for the record in question.

Process. A person who is the primary subject of a criminal justice record, or any representative designated by that person by power of attorney or notarized authorization, may petition a court to seal the record. The individual must contact the court housing the record, request a hearing, and identify the record to be sealed. In turn, the court first determines whether there are grounds to proceed to a hearing on the petition. If the petition can proceed, the court sets a hearing date. The petitioner must notify the prosecuting attorney and the arresting agency of the pending petition hearing. If the court determines that the potential harm to the petitioner outweighs the public interest in retaining the record, the court may order the record sealed. The petitioner is then responsible for providing the CBI and all other custodians of the records, such as local law enforcement and district attorneys, with a copy of the order. The petitioner may also request, and the court may grant, an order sealing any related civil case records.

Sealing Juvenile Records

A juvenile record may be sealed if the court finds that: (1) the petitioner has not been convicted of a felony or misdemeanor, or adjudicated as juvenile delinquent since the termination of the court's jurisdiction or the juvenile's release from parole supervision; (2) there are no criminal proceedings pending against the petitioner; (3) the petitioner has been rehabilitated to the satisfaction of the court; and (4) sealing the record is in the best interests of the petitioner and the community.

A juvenile record *cannot* be sealed for those: (1) adjudicated as an aggravated juvenile offender or a violent juvenile offender; (2) adjudicated for an offense that would constitute a crime of violence if the person had been an adult at the time of the offense; (3) charged as an adult for a crime committed when a juvenile; or (4) adjudicated for an offense involving unlawful sexual behavior.

Effect. Once the court seals a juvenile record, it is considered nonexistent with regard to public information and inspection, but it is still available to the judge and probation department for use in any future juvenile or adult sentencing hearing regarding the person who is the subject of the record. In addition, a district attorney, local law enforcement, and the Department of Human Services may view basic identifying information contained in a sealed record; this information is not open to inspection by the public or an agency of the military. The sealed record can only be viewed upon a finding of good cause at a court hearing.

Process. Courts are required at the time of adjudication to advise defendants of the right to seal their juvenile record. A court may also initiate proceedings to seal the record. A petition must originate in the court that houses the record under consideration. The court sets a hearing date and notifies the prosecuting attorney and any other persons who might have relevant information related to sealing the record. After the hearing, the court may order the records sealed.

A person can petition the court to seal a juvenile record only once per year, and then only: (1) immediately upon a finding of not guilty; (2) one year after the date of contact with law enforcement if it did not result in a referral to another agency, or one year after completion of a juvenile diversion program; (3) four years after termination of the court's jurisdiction over the juvenile, or the juvenile's release from commitment to the Department of Human Services or unconditional release from parole supervision; or (4) ten years after termination of the court's jurisdiction over the juvenile or the juvenile's release from parole supervision, whichever date is later, if the juvenile has been adjudicated a repeat or mandatory juvenile offender, and has not committed another crime.