### Colorado Commission on Criminal and Juvenile Justice Drug Offense Task Force

# **Sealing Working Group**

## Minutes

October 10, 2019 12:00PM-3:00PM 1<sup>st</sup> floor CATPA Room, 710 Kipling, Lakewood

#### ATTENDEES:

#### WORKING GROUP MEMBERS

Audrey Weiss, Lead, District Attorney's Office, 1<sup>st</sup> Judicial District Chris Andrist, Colorado Bureau of Investigation Maureen Cain, Office of Colorado State Public Defender Elaine Cissne, Colorado Bureau of Investigation Janet Drake, Attorney General's Office David Quirova, State Judicial Branch Jack Regenbogen, Colorado Center on Law & Policy Ean Seeb, Governor's Office (Special Advisor on Cannabis)

#### **STAFF**

Stephané Waisanen, Division of Criminal Justice

Issue/Topic	Discussion
Welcome & Introductions	Audrey Weiss, Lead of the Working Group, welcomed and thanked attendees for participating in the discussions. She asked everyone to introduce themselves, and to give some background information about their agencies.

Issue/Topic	Discussion
Discussion: Statutory Mandate & Overall Discussion	Audrey described the initial items she wanted the group to discuss in relation to the mandate and, more specifically, to the process for automatically sealing criminal records for drug offense convictions.
	There are a few states that have or are in the process of enacting a comprehensive automatic sealing bill.
	Pennsylvania – has implemented automatic sealing
	California – passed clean slate bill
	Utah – passed clean slate bill
	Michigan has introduced a bill, and possibly some municipalities may pursue automatic sealing in the future.
	Ean Seeb stated that Illinois passed H.B. 1438 – The Cannabis Regulation and Tax Act (effective January 1, 2020)—allowing for the legalization and retail sales of marijuana, as well as removing low-level convictions and arrests for marijuana possession. The law provides automatic expungement of arrest records for marijuana possession for up to thirty grams.
<b>ACTION</b> The WG should explore automatic sealing processes and costs	Audrey stated that the group needs to explore the processes and costs associated with automatic sealing. The group must review other states, such as Pennsylvania, to identify their processes, procedures, and costs.
ACTION Jack Regenbogen can reach out to Sharon Detrich	Jack Regenbogen mentioned that he could reach out to Sharon Detrich from the Community Legal Services of Philadelphia who has been extensively involved in the Clean Slate Act of Pennsylvania to speak to the group about Pennsylvania's process.
	Elaine Elaine Cissne, from the Colorado Bureau of Investigation (CBI), explained the process of sealing under the current statute. Once CBI receives a petition, the information is logged into a database and for an associated fee. After the fee is paid, the record can be sealed. It is a very time consuming process and there are many individuals who work to seal the records. The biggest challenge is the limited space in the facility, which is restricting the ability to accommodate the additional staff that is required.
	Do the states that have automatic sealing use an algorithm to find old cases that have been sealed? Would it show an arrest charge?
	The algorithm identifies eligibility based on the crime. In Pennsylvania, the waiting period is ten years from arrest, where that state has taken a time-staggered implementation approach. The algorithm searches the database and

finds the information to determine whether an individual has met the waiting
period requirement. It also searches subsequent arrests and court filings to ensure the case is still eligible. From there, the case is sealed.
The funding in Pennsylvania was provided to Information Technology departments to assist with developing an algorithm for the process. The Working Group needs to examine the operating systems that CBI and Judicial
currently use in order to create a platform that would be compatible.
Elaine mentioned CBI's court disposition-arrest matching system. The courts and CBI match cases electronically so that the arrest database has disposition information.
David Quirova stated that an electronic transfer occurs when a case is transferred to the court system from CBI with the SID (State Identification Number) and associated fingerprints, and later the disposition is entered. David will talk with folks from Judicial's Information Technology Department to learn if there is an algorithm process.
Are records sealed in the prosecuting attorney's office or in the police departments? How does that work in other jurisdictions? Is a list sent out monthly?
Jack mentioned that the courts in Pennsylvania send out a list monthly. They generate an initial list and it is sent to a central repository that is equivalent to CBI. The state police have thirty days to review and validate. This is equivalent to Colorado's disposition-matching system.
Regarding older cases, once they are sealed, do the defendants know that their cases have been sealed?
Jack stated that this has been a problem in Pennsylvania. They have a confidential website that lets individuals know if they have a clean slate. A lot of information in the CBI system is relatively old and the information is not getting back to the individual. It has been proposed that other data sources should be utilized that are more current, such as DMV or voter registration records. This may require legislative changes to allow data sharing between those agencies.
Ean stated that one of the biggest challenges is figuring out a date or date range regarding the implementation of automatic sealing. Equal protection must be afforded to everyone.
Jack mentioned that, in terms of challenges, the automatic record sealing legislation that was previously drafted only applies to electronic records. CBI moved to an electronic system back in the early 2000s. There are still many paper files that date back to the 1950s and there is no way to automatically seal them.

Issue/Topic Discussion: Statutory Mandate & Overall Discussion (continued)	Additionally, another issue is a practice that is now prohibited under H.B. 19- 1275 ( <i>Increased eligibility for criminal record sealing</i> ). Certain district attorney's offices sometimes reach plea agreements that require the defendant to waive their sealing rights. If an algorithm query is performed, records that would be eligible based on how much time had elapsed and whether the individual reoffended would not indicate whether there was a plea deal. Another issue is that CBI generates the initial list of eligible cases. In many of these cases, there are missing dispositions and these cases would be excluded, resulting in the removal of a large number of eligible cases.
	Ean mentioned that, in some counties, marijuana possession is referred to as a controlled substance. The group would need to look at the details of the arrest to understand what the substance was. Audrey wanted the group to think about suggestions for automatic sealing as it pertains to various types of drug cases.

#### Next Meeting

Thursday, November 7, 2019 12:30PM – 3:00PM 2nd floor CICJIS Conference Room, 700 Kipling, Lakewood