

Colorado Commission on Criminal and Juvenile Justice

Drug Offense Task Force

**Sealing Working Group
Minutes**

February 13, 2020 12:30PM-2:45PM
1st floor CATPA Meeting Room, 710 Kipling, Lakewood, CO

ATTENDEES:

WORKING GROUP MEMBERS

Audrey Weiss, WG Leader, District Attorney's Office, 1st Judicial District
Chris Andrist, Colorado Bureau of Investigation
Elaine Cissne, Colorado Bureau of Investigation
David Quirova, Office of the State Court Administrator, Judicial Branch
Jack Regenbogen, Colorado Center on Law & Policy
Ean Seeb, Governor's Office

STAFF

Richard Stroker, CCJJ Consultant
Stephané Waisanen, Division of Criminal Justice
Kevin Ford, Division of Criminal Justice

ABSENT

Janet Drake, Attorney General's Office
Maureen Cain, Office of Colorado State Public Defender

GUESTS

Annelise Pehr, Governor's Office

Issue/Topic	Discussion
<p>Welcome, Introductions, Minutes Approval, & Review of Progress Audrey Weiss, Lead</p>	<p>Audrey Weiss, WG Leader called the meeting to order. Audrey asked members to introduce themselves. Ean Seeb introduced Governor’s office intern, Annelise Pehr.</p> <p>Audrey asked members whether there were corrections to the minutes, and with none, the minutes were approved. She offered a broad overview of the progress thus far on the working group charge to develop a process for automatic sealing and some of the inherent challenges.</p> <p>Members outlined and prioritized alternatives to approach the charge, concluding that there is a necessity to focus on the single, most viable approach for the design of the data flow and process, rather than generating several alternative approaches. It might be possible to suggest an incremental approach that delineates the initial and expanded aspects of the automatic sealing implementation.</p>

Issue/Topic	Discussion
<p>Informational Updates</p> <p>Clean Slate-Pennsylvania State Chris Andrist</p> <p>Computer Projects of Illinois, Inc. Chris Andrist</p> <p>ACTION Chris to obtain cost estimate for an automated system</p> <p>“External” Court Systems: Municipals, Denver & Broomfield David Quirova</p> <p>ACTION David Quirova explore Judicial system and options to connect with the Denver system</p>	<p>The Clean Slate Project in Pennsylvania is the first law in the nation to allow certain criminal records to be sealed from public view through an automated process. The information technology provider for that project was UNYSIS. If a record has been sealed, but the individual has a subsequent felony conviction or specific misdemeanors, the district attorney must petition the court to reverse the prior sealing. Records will also be “unsealed” if offenders exceed a threshold of other misdemeanor convictions.</p> <p>Chris Andrist reminded the group that CBI has a contract with software company Computer Projects of Illinois, Inc. (CPI) and reported that this vendor has no experience with automated record sealing.</p> <p>The group would like an estimate to implement an automated system. Although CPI, Inc. has not done this work, Chris will ask if they might have an educated guess of the implementation costs.</p> <p>David Quirova believed that creating and implementing a unified system that includes municipalities, Broomfield, and Denver would be a rather lengthy process. Additionally, funding for programming and implementation would be very costly. Accessing municipal records would be the bigger challenge.</p> <p>Audrey asked whether Judicial has options to access or obtain court case information from Denver and Broomfield, either via direct access or to acquire data extracts? David believed the Broomfield system would be more “access friendly” than the Denver system. Once sealable cases are discovered in these separate systems, how would the sealing process proceed? Additional study would be necessary to answer these questions and others.</p>

<p style="text-align: center;">Issue/Topic Recommendation Development & Discussion All</p>	<p style="text-align: center;">Discussion</p>
	<p>Audrey reminded the group that three potential process “flows” have been identified to handle cases eligible for automatic sealing:</p> <ul style="list-style-type: none"> • CBI identifies applicable cases and transfers these to Judicial for review and confirmation before sealing. • Judicial identifies cases and submits these to CBI for sealing. • Judicial identifies applicable cases, provides a sealing “candidate list” to CBI, CBI verifies eligibility and returns the list of eligible cases to Judicial for confirmation to complete the sealing process. <p>The group reiterated some of the challenges in the design of an automated sealing process:</p> <ul style="list-style-type: none"> • Judicial has a name-based system, whereas CBI is on a fingerprint-based system. • As mentioned previously, there are multiple court data systems. Denver, Broomfield and municipal courts are on different systems. A sealing process that does not include these entities would not be viable. • Cost estimates for automated statewide system designs are necessary and must include options for the varied court systems. <p>Audrey asked whether aspects of the Utah or Pennsylvania models might be emulated in Colorado and summarized aspects of these respective data flows and processes:</p> <p><u>Pennsylvania:</u></p> <ul style="list-style-type: none"> • Individuals free from charges for ten years, • Individuals crime free for a period of ten years following a conviction, • All counties are connected to the Administrative Office of Pennsylvania Courts (AOPC), • Implementation costs were \$3 million for AOPC and \$200,000 upgrade for Pennsylvania state police, • AOPC reviews records for eligible candidates with no subsequent convictions and creates a list, • AOPC sends information to Pennsylvania State Police (PSP), • PSP verifies records for those who meet criteria, approvals are returned to AOPC, and counties of record are notified, • Counties of record seal cases, AOPC is notified, PSP is notified and databases are updated.

<p>Issue/Topic Recommendation Development & Discussion (continued)</p>	<p><u>Utah:</u> (Full implementation expected summer 2020)</p> <ul style="list-style-type: none"> • State Court Administrator Office (SCAO)/Judicial reviews files for subsequent convictions, pending cases, and unpaid fees, and creates a list of eligible records. • The list is forwarded to prosecutors who can reject for the following reasons: <ul style="list-style-type: none"> - if case does not qualify due to continued criminal behavior - if fines, fees, and/or restitution have not been paid • The list is returned to the SCAO and a judge signs the sealing order and notifications of sealing are disseminated. <p>With these models in mind, members engaged in a freeform discussion of opportunities and challenges in the preparation of the recommendation:</p> <p>Sealing Process & Record “Flow”</p> <ul style="list-style-type: none"> • Audrey Weiss asked whether Judicial can obtain information from Denver and/or Broomfield? Is there a way that the unified system can “reach in” to these systems without them necessarily being part of a unified system? • David Quirova will check with Office of Information Technology (OIT) to find out if that is possible. He reiterated that a unified system that includes municipalities would be quite costly. • Chris Andrisc thought that it was more beneficial to start with the Judicial system because CBI is not a “disposition database,” but an arrest database. • Audrey stated that some municipalities, such as Broomfield and Ft. Morgan are on the state judicial system. Ft. Morgan only uses the system for warrants and that only some cases are in the system. How do we devise a system through Judicial to allow information to be accessed? • Jack Regenbogen asked whether automatic sealing statewide should be delayed until after Denver/Broomfield could be integrated into the state court system? Alternatively, do we propose a method to incrementally integrate Denver, Broomfield, and the municipalities at a later date? • Jack summarized this conundrum by suggesting two options to address the “Denver/Broomfield issue”: 1) Judicial acquires the charges and dispositions from these entities via some form of system access or integration, or 2) Simply assign the responsibility to these entities to participate in the automatic sealing process by the requirement that they engage in both aspects of the sealing process...providing lists to Judicial for sealing verification and verifying records forwarded to them by Judicial. • Audrey and Jack will review constitutional provisions concerning the “home rule” issue and whether these entities can be required to fulfill a state-issued mandate.
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ACTION
Audrey/Jack will explore
home rule issues

<p style="text-align: center;">Issue/Topic Recommendation Development & Discussion (continued)</p>	<ul style="list-style-type: none"> • Audrey described the current law regarding the waiting period prior to sealing eligibility based on crime level of the drug conviction and existence of any new convictions. • Audrey mentioned a concern regarding how to address automated sealing when an individual is convicted of municipal crimes? Currently, any municipal conviction will be excluded from the process. How might those records be included in the proposed process? • Audrey stated that recent drug laws have changed the classification of drug possession from felony to misdemeanor for specific circumstances which may result in a substantial increase in the sealing caseload. • The recommendation should include a method for defendants to determine whether their cases were sealed. • The group spent some time considering the current sealing process and postulating which and how elements might be automated when the system design and analysis process would be undertaken in the future. <p>Recommendation Approach & Content</p> <ul style="list-style-type: none"> • Could the elements of an <i>automatic</i> sealing process and the elements of an <i>automated</i> system be proposed separately? Chris described that the Utah model might provide a general method to accomplish this approach. • Audrey stated that it would not be possible to develop an automatic sealing process without automation. The labor costs for a non-automated system would be very expensive. Automation would save in labor costs, but has also been described as very expensive. Either strategy will be expensive. • Audrey also stated that an “un-automated” approach would not be viable due to the differences in how CBI identifies records (fingerprints) and how Judicial identifies records (name-based). Records that involve aliases would also be difficult to match. • The group discussed whether to propose a non-automated process to initially implement automatic sealing that would be replaced once a comprehensive automated system is built? Members expressed the trade-offs between a more immediate, non-automated process and its costs versus a delayed, but more efficient, automated system and its costs. • Jack suggested creating a proposal based on the existing Judicial system and include an outline of future steps to integrate municipalities and counties that are not included in the system. • Given the complications identified, Richard Stroker described that the recommendation could describe the basic elements of automatic sealing with and without an integrated and automated system. • Ean Seeb asked whether the (2019 un-introduced) bill draft shared previously in the working group proposing a “clean slate” approach might provide any useful language. Audrey indicated that Jefferson County already provides extensive help for individuals who are interested in petitioning to seal records and that the previous “clean slate” bill did not provide a complete set of elements for proper implementation.
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<p style="text-align: center;">Issue/Topic Recommendation Development & Discussion (continued)</p>	<ul style="list-style-type: none"> • Audrey suggested that the working group not propose any legislative language because the legislature is already considering another bill that might expand record sealing. She felt that the Governor and Legislature are the appropriate parties to initiate legislation and are positioned to identify the type cases for sealing and not the Commission. Although, this topic could be referenced in the recommendation. • Audrey reiterated her interpretation that the mandate to propose “a process for sealing” is limited to automation and that drug laws have become much more liberal recently. She noted that the information accompanying the automatic sealing proposal could point out the applicability to other crime types (in case subsequent legislation expands sealing) or to other sealing circumstances (for example, when cases are dismissed entirely). • Audrey believed a list of eligible drug offenses should be included in the recommendation. • Should the group identify any drug crimes that are eligible for sealing by petition that should not be eligible for automatic sealing? The group has not discussed/identified such crimes. Misdemeanor possession is the focus of the current sealing eligibility. • Should there be different time frames of eligibility to seal different crimes? The group felt that two different timespan thresholds could be suggested, one for misdemeanors (7 years) and one for felonies (10 years). • Ean described that there is much interest in the final Commission report in response to this legislative mandate and that most are aware that these efforts will be costly. • For informational purposes, the recommendation discussion could include a reference to sealing statutes (including modifications by House Bill 2019-1275) and the list of drug offenses that would qualify for automatic sealing, based on those eligible in the petition process. • The recommendation should include general timeframes and costs, the specific component costs and time necessary for implementation. • Members contributed to a summary of the elements to include in the recommendation: the eligible drug offenses; the time frames for sealing...potentially 7 years for misdemeanors and 10 years for felonies; the agency “flow” of records to confirm sealing eligibility; agency responsibilities; a single integrated system; potential costs; timeline for implementation; sealing “disqualifiers”; options to accommodate/account for separate court systems (Denver/ Broomfield). <p>Miscellaneous Comments</p> <ul style="list-style-type: none"> • Legislation this year may require additional conditions that qualify for sealing. Group members referred to other pending legislation addressing sealing and expungement. • Ean will soon attend a related national cannabis industry meeting where a law enforcement session will focus on clemency for low level marijuana offenders.
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Issue/Topic	Discussion
<p>Next Steps Richard Stroker</p>	<p>Richard reiterated that the group agreed to develop one recommendation with several elements (combine this summary with those mentioned above in the group-generated summary of elements):</p> <ul style="list-style-type: none"> • Define a process for courts to automatically seal records, • Ways for defendants to determine whether their cases were sealed, • List of eligible offenses, • Ability to seal cases for courts on different systems or to direct these courts on separate systems to seal the records, • Timeframe of implementation, and • Implementation costs, including a breakdown of implementation expectations and costs associated with each year of implementation.

Issue/Topic	Discussion
<p>Adjourn Audrey Weiss, Leader</p>	<p>Audrey proposed to change the April meeting from April 10 to Friday, April 3 from 10:00 a.m. - 1:00 p.m. due to a scheduling conflict. The group agreed to the new date and time change.</p> <p>Audrey thanked the group members for their participation and contributions.</p>

Next Meeting

Thursday, March 12, 2020

Sealing Working Group
12:30 pm –2:45 pm
2nd Floor Meeting Room
710 Kipling St., Lakewood, CO 80215
(Room change!)

Drug Offense Task Force
3:00 pm - 4:00 pm
2nd Floor Meeting Room
710 Kipling St., Lakewood, CO 80215