

Colorado Commission on Criminal and Juvenile Justice

Drug Offense Task Force

**Sealing Working Group
Minutes**

March 12, 2020 12:30PM-2:45PM
2nd floor Conference 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
Maureen Cain, Office of Colorado State Public Defender
Ean Seeb, Governor's Office

STAFF

Richard Stroker, CCJJ Consultant
Kim English, Division of Criminal Justice
Stephané Waisanen, Division of Criminal Justice
Laurence Lucero, Division of Criminal Justice
Damien Angel, Division of Criminal Justice

ABSENT

Janet Drake, Attorney General's Office

GUESTS

Tom Raynes, Colorado District Attorneys' Council
Adam Zarrin, Governor's Office
Fahad Khan, Governor's Office
Annelise Pehr, Governor's Office

Issue/Topic	Discussion
<p>Welcome & Agenda Audrey Weiss, Lead</p>	<p>Audrey Weiss, WG Leader called the meeting to order and welcomed Adam Zarrin, Fahad Kahn, and Annelise Pehr from the Governor’s office. The group introduced themselves. The February minutes will be sent via email for review and approval.</p> <p>The goal for the meeting was to conduct a final review and discussion of the sealing recommendation.</p>

Issue/Topic	Discussion
<p>Review of Preliminary Recommendation Audrey Weiss, Lead</p>	<p>Audrey Weiss proceeded with a quick overview of the draft recommendation on automatic sealing of qualifying drug convictions. Audrey stated that additions offered by Chris Andrist and Jack Regenbogen to the draft distributed to members had been integrated into the current draft of the recommendation.</p> <p>Audrey, with assistance by Richard, led members in a review of the recommendation language and the information included in the “Discussion” section of the document. Members engaged in a collaborative session of line-by-line editing of the recommendation and “Discussion.”</p> <p><u>Recommendation FY20-DR #01.</u> Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses [Policy] This recommendation would create, implement, and fund a process that will permit the automatic sealing of criminal conviction records for drug offenses. The State Court Administrator’s Office (SCAO), the Colorado Bureau of Investigations (CBI), and each district attorney’s office, will implement procedures to evaluate cases that qualify for automatic sealing and will automatically seal eligible cases without associated fees or a Motion or Petition to Seal filed by the defendant.</p> <p>The following describes the recommended process (as edited by the group):</p> <ul style="list-style-type: none"> • The State Court Administrator’s Office (SCAO) prepares a list of drug convictions that are eligible for sealing (disqualifying those with any subsequent criminal convictions during the requisite waiting period). <ul style="list-style-type: none"> - Petty offense/misdemeanor drug convictions - sealed seven years after case disposition. - Felony drug convictions - sealed ten years after case disposition. • SCAO forwards the list of eligible cases to the Colorado Bureau of Investigation (CBI) to review criminal histories for identification and validation. • CBI forwards the amended list to district attorneys’ offices in judicial districts. The D.A. office will disqualify cases with a conditional plea-bargain agreements or individuals with a pending criminal charge. • Each district attorney’s office will forward the revised list to the SCAO.

<p style="text-align: center;">Issue/Topic</p> <p style="text-align: center;">Review of Preliminary Recommendation Audrey Weiss, Lead</p>	<ul style="list-style-type: none"> ○ If authority granted to SCAO to sign off on the sealing order by Chief Judge, the SCAO transmits a copy of sealing order to CBI, appropriate law enforcement agencies and district attorney’s offices to seal each case, or ○ If authority is not granted to SCAO, district attorney’s offices will forward amended list to the district courts who will enter an order to seal each case. <ul style="list-style-type: none"> ● SCAO will generate a list of eligible cases every thirty-five days. CBI and district attorney’s office have thirty-five days to review the list of eligible cases. District courts under SCAO will enter the order no later than fourteen days. <p>Audrey and group members offered additional points that were the basis for additional edits to the recommendation language and the information included in the “Discussion” section:</p> <ul style="list-style-type: none"> ● The development, creation, and testing phases of the automated system should be completed in two years. ● Subsequently, identification of eligible backlog cases and the entry of sealing orders should be completed within a year. ● Funding should include initial development and continued maintenance for state agencies involved in the process. ● Colorado currently permits sealing of a number of petty offense, misdemeanor, and felony drug convictions. The current procedure requires a defendant to file a Motion to Seal with the Court in the jurisdiction in which the conviction occurred for a \$65 filing fee (a fee waiver is possible, if indigent). If needed, there are self-help centers and advocates in every county throughout Colorado to assist with the necessary application forms. ● Colorado’s current system to seal requires an individual to pursue relief by filing a motion or a petition to the court. While beneficial to some, this process can be cumbersome for others. An automated sealing process would remove the filing requirement and fees and would benefit those individuals who are unable to pay or are unaware of the sealing process. The existing petition process would remain as an option, even if automatic sealing were implemented. ● The initial challenge to implement automatic sealing of drug convictions is that Denver city/county and the 215 municipal courts are not on the state system. This would exclude municipal convictions from sealing consideration. The recommendation requires that state judicial be allowed to “reach in” to the Denver city/county database to check an individual’s record for subsequent convictions. ● There are no cost estimates in the recommendation for district attorneys’ offices, law enforcement or courts because they will not be part of the <i>initial</i> identification and confirmation of cases. The estimated costs to state agencies to upgrade and implement automatic sealing capability include: <ul style="list-style-type: none"> Colorado Bureau of Investigation: <ul style="list-style-type: none"> - Two years to upgrade
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<p>Issue/Topic</p> <p>Review of Preliminary Recommendation Audrey Weiss, Lead</p>	<ul style="list-style-type: none"> - Initial cost, approximately \$2 million <p>The Office of the State Court Administrator:</p> <ul style="list-style-type: none"> - Two years to upgrade - Initial cost for software engineer, \$224,620 - Setup programming, architecture, and software to communicate with Denver city and county database, \$950,000 - Continuing maintenance, \$175,000/year. <ul style="list-style-type: none"> • The automatic process does not propose that sealing notifications be sent to defendants. Once automatic sealing of drug convictions is implemented, public service campaigns should be funded to inform defendants how to determine whether prior drug convictions have been sealed. • The group discussed adding a footnote that indicated that the automatic sealing process could be used as a model for other types of criminal offenses. • There was concern of what would happen to the list of eligible individuals after CBI reviews it. In the recommendation, there is a two-step process to verify subsequent convictions. • Could the courts (judges) grant authority to the SCAO to issue a valid court order to seal? There would need to be agreements to allow the SCAO the authority to enter order sealing or some other method to authorize the sealing process. • There was discussion of timeframes with two full years to build and implement, and one year to manage the backlog with another three to four years to manage current cases. • There was a discussion of the associated costs and technical assistance available from non-profit organizations. • There was a discussion of the elements and perspective of background information included in the "Discussion" section and additional edits were made.
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<p>Issue/Topic</p> <p>Next Steps & Adjourn Audrey Weiss, Lead</p>	<p style="text-align: center;">Discussion</p> <p>The group agreed to the finalized recommendation. The DCJ staff will integrate the revisions, finalize the draft and share the document with members of the Working Group. If the Drug Offense Task Force is amenable, the draft recommendation will be presented to the Drug Offense Task Force in the meeting immediately to follow. Audrey thanked the Working Group for all their contributions and adjourned the meeting.</p> <p><i>Note: Following the Sealing Working Group meeting, the recommendation was approved by the Drug Offense Task Force. <u>Therefore, the Sealing Working Group was concluded and will have no further meetings.</u> The preliminary recommendation will be presented to CCJJ in April.</i></p>
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NO FURTHER MEETINGS OF THE SEALING WORKING GROUP