

DRUG OFFENSE TASK FORCE
FINAL RECOMMENDATION PRESENTED TO THE
COLORADO COMMISSION ON CRIMINAL AND JUVENILE JUSTICE
July 10, 2020

FY20-DR #01. Create and Implement a Process for Automatically Sealing Criminal Conviction Records for Drug Offenses [Budgetary]

Recommendation FY20-DR #01

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 Investigation (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, a Motion or a Petition to Seal being filed by the defendant.

The following describes the recommended process:

- The State Court Administrator's Office (SCAO) will prepare a list of drug convictions that are eligible to be sealed pursuant to Sections 24-72-703 and 24-72-706, C.R.S. from the current state database. Cases that qualify for automatic sealing will be based on the drug charge(s) of which the defendant was convicted, the lack of any subsequent criminal convictions during the requisite waiting period, the lack of any pending criminal cases, and the payment in full of all fines, fees, costs, and restitution. The current state database and the database used by entities not on the state system (for example, the City and County of Denver) will be reviewed for subsequent convictions and pending criminal cases. This review is name-based and a sufficient number of points of reference for identification validation will be determined by SCAO. If a sufficient number of points of validation are not present, the conviction is not eligible for automatic sealing. Convicted charges must be drug charges only and all charges must qualify to be sealed. Petty offense/misdemeanor drug convictions will qualify for automatic sealing seven years after the disposition of the case, and felony drug convictions will qualify for automatic sealing 10 years after the disposition of the case. The list will be categorized by judicial district.
- The SCAO will forward the list of eligible cases to the Colorado Bureau of Investigation (CBI). CBI will compare the list to criminal histories on file. This review is fingerprint-based, and a sufficient number of points of reference for identification validation will be determined by CBI. If a sufficient number of points of validation are not present, the conviction is not eligible for automatic sealing. CBI will disqualify any cases in which the defendant was convicted of criminal charges during the requisite waiting period.
- CBI will forward the amended list to the district attorney's office in each judicial district. The district attorney's office will disqualify cases in which a condition of the plea bargain agreement was not to seal the case and cases where the defendant has pending criminal charges.
 - (1) Each district attorney's office will forward the amended list to the SCAO. The SCAO may be given the authority by the presiding Chief Judge of each judicial district to sign off on a sealing order. If the SCAO is given this authority by the Chief Judge, then the SCAO will have a sealing order issued in each case, pursuant to this authority. SCAO will seal the court record. SCAO will transmit a copy of the sealing order to CBI, the law enforcement agency that investigated and filed the case, and the district attorney's office to seal their records.

OR, if the Chief Judge does not give this authority to SCAO,

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- (2) The district attorney's office will forward the amended list to the district court(s) in their respective district(s) who will enter an order to seal each case. The list of sealed cases will be transmitted to the SCAO. The SCAO will seal the court records. A copy of the sealing order will be transmitted by SCAO to CBI, the law enforcement agency that investigated and filed the case, and the district attorney's office to seal their records.
- Reasonable efforts will be made to create and implement the programs and procedures necessary for automatic sealing. Development, creation, and testing of the process should be completed within two years.
 - The generation of the list by SCAO of the backlog of eligible cases and the entry of the sealing order for the backlog cases should be completed within one year after the development, creation, and testing of the process is completed, subject to available resources.
 - Once the backlog of cases is completed, SCAO will generate a list of eligible cases for sealing every 35 days. CBI and each district attorney's office will be allowed 35 days to complete their functions in reviewing the list of eligible cases under the statutory mandate. Each district court or SCAO under the authority of the district court will enter the order as soon as practical but no later than 14 days. Once the sealing order is received, CBI, law enforcement and the district attorney's office shall seal their records as soon as practical but no later than 14 days.
 - Funding should be provided for initial development and continued maintenance for each agency involved in the process.
 - A procedure should be enacted whereby defendants can confidentially view a website to determine whether their case has been sealed. Additionally, with proper safeguards in place, the defendant should be permitted to contact the district court where their case has been sealed to obtain a copy of the sealing order.

[Note: No statute placement or language has been prepared for this recommendation.]

Discussion

Colorado currently permits the sealing of a number of petty offense, misdemeanor, and felony drug convictions, pursuant to Sections 24-72-703 and 24-72-706, C.R.S. The current procedure requires the defendant to file a Motion to Seal with the Court in the jurisdiction in which the conviction occurred. The defendant is required to pay a \$65 filing fee or apply to have the fee waived if indigent. Once the case is sealed, the defendant is required to pay a \$20 fee to the Colorado Bureau of Investigation to seal the arrest record.

For many people, involvement in the criminal justice system leads to perpetual unemployment, housing insecurity, and the loss of income for themselves and their families. Colorado's system requires that an individual must affirmatively pursue relief by filing a motion or a petition with the court. This process, while beneficial to some, can be cumbersome for others. Additionally, there is a lack of awareness regarding who is eligible for sealing, and many people who have an eligible record may be unaware of the opportunities for relief. Moreover, the required fees associated with sealing can also be a barrier. Record sealing opportunities provide avenues for economic self-sufficiency. By removing barriers to employment and housing, expanded record sealing would provide a chance to move on and become more productive citizens.

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Research indicates that policies that reduce economic obstacles for those with criminal histories are effective at lowering recidivism and strengthening public safety, given the association between limiting access to an individual's record of conviction and a lower recidivism rate. A process for automatic sealing of drug convictions would eliminate the need to file a Motion to Seal with the Court and eliminate the payment of the fees as noted above.¹

The initial obstacle to automatic sealing of drug convictions is that not all Colorado courts are on a unified database system. None of the 215 municipal courts in Colorado are on the state court database. Therefore, this excludes municipal convictions as a reason for disqualification of automatic sealing. In larger municipalities throughout the state, such as Aurora, Denver, Colorado Springs, and Lakewood, many misdemeanor offenses are filed as municipal criminal offenses. Excluding these criminal convictions as disqualifiers for the sealing of convictions is inconsistent with the current language in Sections 24-72-703 and 24-72-706, C.R.S.

Additionally, the City and County of Denver is not on the state court database; therefore, those misdemeanor criminal cases are not accessible directly by the SCAO to review for potential automatic sealing. A unified, centralized database, including all courts in Colorado, would be required to permit all cases that qualify to be automatically sealed, and those that do not qualify due to subsequent criminal convictions to be removed from consideration. Due to this constraint, any legislation requiring automatic sealing of drug convictions would either need to require and fund the creation of a unified database throughout the state, or amend the language regarding subsequent convictions to be limited to only misdemeanors and felonies.

Utah and Pennsylvania are currently preparing systems for the automatic sealing of a limited number of criminal convictions. Both jurisdictions have provided information and suggestions in creating and implementing a process for automatic sealing. In Utah, the Administrative Office of the Courts (AOC) and the Bureau of Criminal Investigation (BCI) will require 3-4 years to fully implement the procedures required by their legislation. AOC requested \$1 million, but received \$400,00 the first year, then \$200,000 each subsequent year to implement the bill. BCI received \$500,000 for the development of the program. It is unknown whether they received funding for subsequent years. The Utah Division of Wildlife Resources received \$100,000 in funding in the bill. All courts throughout the State of Utah are on a unified database.

In Pennsylvania, the Administrative Office of the Pennsylvania Courts (AOPC) and the Pennsylvania State Police (PSP) were given one year to build and test an automated system. Many problems arose during this short implementation period, and they recommended a minimum of two years is necessary to create and test an automated system. APOC received \$3 million to implement an automated system, and PSP was given \$200,000 to upgrade the existing system to accommodate an automated process. PSP has requested funds for yearly maintenance of their systems, and that request is pending. All of the courts throughout the State of Pennsylvania are on a unified database.

¹ Pursuant to the current mandate, this recommendation only addresses automated sealing of eligible *drug-related* offenses. These same processes may serve as a model for other criminal records that become eligible for sealing.

[As Approved]

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The Colorado Bureau of Investigation estimates that two years will be required to upgrade its system to include an automatic sealing capability. The initial cost would be approximately \$2 million. No additional costs for ongoing maintenance would be requested by CBI for this specific function.

The Office of the State Court Administrator would request two years to complete an upgrade to their computer system to permit automatic sealing. The initial cost would be approximately \$224,640 for a software engineer to complete the upgrade and approximately \$950,000 to develop the programming, architecture, and software to communicate with the City and County of Denver database. The ongoing maintenance cost would be \$175,000 per year.

CBI maintains a contract with a sole source vendor for yearly maintenance and upgrades to their computer system. SCAO maintains its own database, and initiates external contracts with software engineers for specific projects. Code for America is a non-profit organization that is available to assist in an initial assessment review and implementation procedure for automatic record sealing. The cost of implementing this recommendation may be lower to the extent Code for America or similar organizations may be available to provide free technical assistance.

An automatic process of sealing drug convictions does not contemplate notice to each defendant that their case has been sealed. Once automatic sealing of drug convictions begins, a public service information campaign should be created and funded to alert defendants how to determine whether their prior drug conviction has been sealed. A procedure should be enacted whereby defendants can confidentially view a website to determine whether their case has been sealed. Additionally, with proper safeguards in place, the defendant should be permitted to contact the district court where their case has been sealed to obtain a copy of the sealing order.

An automatic process of sealing drug convictions will not preclude a defendant from filing a Motion to Seal Criminal Conviction Records pursuant to the current statutory authority, if the records are eligible to be sealed and automatic sealing has not occurred.