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Overview - COLORADO ; PART 4 Revised Statutes Annotated

AUTHOR: US Department of Justice, Bureau of Justice Statistics
Washington, DC 20531

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Colorado Revised Statutes Annotated

PART 4

COLORADO BUREAU OF INVESTIGATION

Statutes Replacing 24-32-401 and 24-32-412
July 1, 1984

24-33.5-401. Colorado bureau of investigation. (1) There is hereby created as a division of the department of public safety the Colorado bureau of investigation, referred to in this part 4 as the "bureau".

(2) The Colorado bureau of investigation and the office of the director shall exercise their powers and perform their duties and functions under the department of public safety and the executive director as transferred to the department by a type 2 transfer, as such transfer is defined in the "Administrative Organization Act of 1968", article 1 of this title.

24-33.5-412. Functions of bureau - legislative review. (1) The bureau has the following authority:

(a) When assistance is requested by any sheriff, chief of police, district attorney, or chief law enforcement officer and with the approval of the director, to assist such law enforcement authority in the investigation and detection of crime and in the enforcement of the criminal laws of the state;

(b) When assistance is requested by any district attorney and upon approval by the director, to assist the district attorney in preparing the prosecution of any criminal case in which the bureau had participated in the investigation under the provisions of this part 4;

(c) To establish and maintain fingerprint, crime, criminal, fugitive, stolen property, and other identification files and records; to operate the statewide uniform crime reporting program; and to arrange for scientific laboratory services and facilities for assistance to law enforcement agencies, utilizing existing facilities and services wherever feasible;

(d) To investigate suspected criminal activity when directed to do so by the governor;

(e) To procure any records furnished by any law enforcement agency of this state, including local law enforcement agencies, at the expense of the bureau;

(f) To enter into and perform contracts with the department of social services for the investigation of any matters arising under the "Revised Uniform Reciprocal Enforcement of Support Act", article 5 of title 14, C.R.S., or a substantially similar enactment of another state;

(g) Repealed. L. 83, p. 934, § 1, effective July 1, 1984.

(h) To compile, maintain, and distribute a list of missing children as required by section 24-33.5-415.1.

(2) In order to enable the bureau to carry out the functions enumerated in this section, it shall establish and maintain statewide telecommunications programs consistent with telecommunications programs and policies of the state telecommunications director.

(3) (a) Any other provision of law to the contrary notwithstanding and excluding title 19, C.R.S., except as provided in paragraph (b) of this subsection (3), on and after July 1, 1971, in accordance with a program to be established by the bureau, every law enforcement, correctional, and judicial entity, agency, or facility in this state shall furnish to the bureau all arrest, identification, and final charge dispositional information on persons arrested in Colorado for federal, state, or out-of-state criminal offenses and on persons received for service of any sentence of incarceration. The department of corrections shall furnish its information to the bureau within twenty-four hours of the time a person is received into the custody of the department for service of sentence and prior to twenty-four hours of the time of the person's final discharge from supervision. The department shall also report to the bureau a person's release to parole or to a community correctional facility or program prior to twenty-four hours of such release. The provision of information

required by this subsection (3) shall be made in a manner prescribed by the bureau; except that the provision of information by judicial entities, agencies, and facilities shall be under procedures to be established jointly by the state court administrator and the director.

(b) On or after July 1, 1983, the bureau may establish a program under which every entity, agency, or facility specified in paragraph (a) of this subsection (3) shall furnish to the bureau the information specified in section 19-2-902 (3), C.R.S.

(4) The bureau is charged with the responsibility to investigate organized crime which cuts across jurisdictional boundaries of local law enforcement agencies, subject to the provisions of section 24-33.5-410.

(5) To assist the bureau in its operation of the uniform crime reporting program, every law enforcement agency in this state shall furnish such information to the bureau concerning crimes, arrests, and stolen and recovered property as is necessary for uniform compilation of statewide reported crime, arrest, and recovered property statistics. In cases in which there is an arrest for child abuse or sexual assault on a child, the law enforcement agency shall furnish information to the bureau concerning the modus operandi of such crimes in order to facilitate the identification of cross-jurisdictional offenders. The cost to the law enforcement agency of furnishing such information shall be reimbursed out of appropriations made therefor by the general assembly; except that the general assembly shall make no such reimbursement if said cost was incurred in a fiscal year during which the Colorado crime information center was funded exclusively by state or federal funds.

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Public Records

PART 2

INSPECTION, COPYING, OR PHOTOGRAPHING

24-72-201. Legislative declaration. It is declared to be the public policy of this state that all public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise specifically provided by law.

24-72-202. Definitions. As used in this part 2, unless the context otherwise requires:

(1) "Custodian" means and includes the official custodian or any authorized person having personal custody and control of the public records in question.

(2) "Official custodian" means and includes any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of public records, regardless of whether such records are in his actual personal custody and control.

(3) "Person" means and includes any natural person, corporation, partnership, firm, or association.

(4) "Person in interest" means and includes the person who is the subject of a record or any representative designated by said person; except that if the subject of the record is under legal disability, "person in interest" means and includes his parent or duly appointed legal representative.

(5) "Political subdivision" means and includes every county, city and county, city, town, school district, and special district within this state.

(6) "Public records" means and includes all writings made, maintained, or kept by the state or any agency, institution, or political subdivision thereof for use in the exercise of functions required or authorized by law or administrative rule or involving the receipt or expenditure of public funds. It does not include criminal justice records which are subject to the provisions of part 3 of this article.

(7) "Writings" means and includes all books, papers, maps, photographs, cards, tapes, recordings, or other documentary materials, regardless of physical form or characteristics.

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Source: L. 68, p. 201, § 2; C.R.S. 1963, § 113-2-2; L. 77, p. 1250, § 2.

24-72-203. Public records open to inspection. (1) All public records shall be open for inspection by any person at reasonable times, except as provided in this part 2 or as otherwise provided by law, but the official custodian of any public records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the public records requested are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact, in writing if requested by the applicant. In such notification he shall state in detail to the best of his knowledge and belief the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

(3) If the public records requested are in the custody and control of the person to whom application is made but are in active use or in storage and therefore not available at the time an applicant asks to examine them, the custodian shall forthwith notify the applicant of this fact, in writing if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the records will be available for inspection.

24-72-204. Allowance or denial of inspection - grounds - procedure - appeal.

(1) The custodian of any public records shall allow any person the right of inspection of such records or any portion thereof except on one or more of the following grounds or as provided in subsection (2) or (3) of this section:

- (a) Such inspection would be contrary to any state statute.
- (b) Such inspection would be contrary to any federal statute or regulation issued thereunder having the force and effect of law.
- (c) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) (a) The custodian may deny the right of inspection of the following records, unless otherwise provided by law, on the ground that disclosure to the applicant would be contrary to the public interest:

- (I) Repealed, L. 77, p. 1250, § 4, effective December 31, 1977.
- (II) Test questions, scoring keys, and other examination data pertaining to administration of a licensing examination, examination for employment, or academic examination; except that written promotional examinations and the scores or results thereof conducted pursuant to the state personnel system

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or any similar system shall be available for inspection, but not copying or reproduction, by the person in interest after the conducting and grading of any such examination;

(III) The specific details of bona fide research projects being conducted by a state institution; and

(IV) The contents of real estate appraisals made for the state or a political subdivision thereof relative to the acquisition of property or any interest in property for public use, until such time as title to the property or property interest has passed to the state or political subdivision; except that the contents of such appraisal shall be available to the owner of the property at any time, and except as provided by the Colorado rules of civil procedure. If condemnation proceedings are instituted to acquire any such property, any owner thereof who has received the contents of any appraisal pursuant to this section shall, upon receipt thereof, make available to said state or political subdivision a copy of the contents of any appraisal which he has obtained relative to the proposed acquisition of the property.

(b) If the right of inspection of any record falling within any of the classifications listed in this subsection (2) is allowed to any officer or employee of any newspaper, radio station, television station, or other person or agency in the business of public dissemination of news or current events, it shall be allowed to all such news media.

(3) (a) The custodian shall deny the right of inspection of the following records, unless otherwise provided by law; except that any of the following records, other than letters of reference concerning employment, licensing, or issuance of permits, shall be available to the person in interest under this subsection (3):

(I) Medical, psychological, sociological, and scholastic achievement data on individual persons, exclusive of coroners' autopsy reports and group scholastic achievement data from which the individual cannot be identified; but either the custodian or the person in interest may request a professionally qualified person, who shall be furnished by the said custodian, to be present to interpret the records;

(II) Personnel files, except applications and performance ratings; but such files shall be available to the person in interest and to the duly elected and appointed public officials who supervise his work;

(III) Letters of reference;

(IV) Trade secrets, privileged information, and confidential commercial, financial, geological, or geophysical data furnished by or obtained from any person;

(V) Library and museum material contributed by private persons, to the extent of any limitations placed thereon as conditions of such contributions; and

(VI) Addresses and telephone numbers of students in any public elementary or secondary school.

(b) Nothing in this subsection (3) shall prohibit the custodian of records from transmitting data concerning the scholastic achievement of any student to any prospective employer of such student, nor shall anything in this subsection (3) prohibit the custodian of records from making available for inspection, from making copies, print-outs, or photographs of, or from transmitting data concerning the scholastic achievement or medical, psychological, or sociological information of any student to any law enforcement agency of this state, of any other state, or of the United States where such student

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is under investigation by such agency and the agency shows that such data is necessary for the investigation.

(c) Nothing in this subsection (3) shall prohibit the custodian of the records of a school, including any institution of higher education, or a school district from transmitting data concerning standardized tests, scholastic achievement, or medical, psychological, or sociological information of any student to the custodian of such records in any other such school or school district to which such student moves, transfers, or makes application for transfer, and the written permission of such student or his parent or guardian shall not be required therefor. No state educational institution shall be prohibited from transmitting data concerning standardized tests or scholastic achievement of any student to the custodian of such records in the school, including any state educational institution, or school district in which such student was previously enrolled, and the written permission of such student or his parent or guardian shall not be required therefor.

(d) Notwithstanding the provisions of subparagraph (VI) of paragraph (a) of this subsection (3), under policies adopted by the local board of education, the names and addresses of students in any secondary school may be released to a recruiting officer for any branch of the United States armed forces who requests such information, unless the student requests in writing that said information not be released. The recruiting officer shall use the data released for the purpose of providing information to students regarding military service and shall not use it for any other purpose or release such data to any person or organization other than individuals within the recruiting services of the armed forces.

(4) If the custodian denies access to any public record, the applicant may request a written statement of the grounds for the denial, which statement shall cite the law or regulation under which access is denied and shall be furnished forthwith to the applicant.

(5) Any person denied the right to inspect any record covered by this part 2 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the inspection of such record. Hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of the right of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian personally to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

(6) If, in the opinion of the official custodian of any public record, disclosure of the contents of said record would do substantial injury to the public interest, notwithstanding the fact that said record might otherwise be available to public inspection, he may apply to the district court of the district in which such record is located for an order permitting him to restrict such disclosure. Hearing on such application shall be held at the earliest practical time. After hearing, the court may issue such an order upon a finding that disclosure would cause substantial injury to the public interest. In such action the burden of proof shall be upon the custodian. The person seeking permission to examine the record shall have notice of said hearing served upon him in the manner provided for service of process by the Colorado rules of civil procedure and shall have the right to appear and be heard.

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24-72-205. Copies, printouts, or photographs of public records. (1) In all cases in which a person has the right to inspect any public record, he may request that he be furnished copies, printouts, or photographs of such record. The custodian may furnish such copies, printouts, or photographs for a reasonable fee, to be set by the official custodian, not to exceed one dollar and twenty-five cents per page unless actual costs exceed that amount. Where fees for certified copies or other copies, printouts, or photographs of such record are specifically prescribed by law, such specific fees shall apply.

(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

24-72-206. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 2 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

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TITLE 24
GOVERNMENT - STATE

ARTICLE 72
Public Records

PART 3
CRIMINAL JUSTICE RECORDS

24-72-301. Legislative declaration. (1) The general assembly hereby finds and declares that the maintenance, access and dissemination, completeness, accuracy, and sealing of criminal justice records are matters of statewide concern and that, in defining and regulating those areas, only statewide standards in a state statute are workable.

(2) It is further declared to be the public policy of this state that criminal justice agencies shall maintain records of official actions, as defined in this part 3, and that such records shall be open to inspection by any person and to challenge by any person in interest, as provided in this part 3, and that all other records of criminal justice agencies in this state may be open for inspection as provided in this part 3 or as otherwise specifically provided by law.

24-72-302. Definitions. As used in this part 3, unless the context otherwise requires:

(1) "Arrest and criminal records information" means information reporting the arrest, indictment, or other formal filing of criminal charges against a person; the identity of the criminal justice agency taking such official action relative to an accused person; the date and place that such official action was taken relative to an accused person; the name, birth date, last-known address, and sex of an accused person; the nature of the charges brought or the offenses alleged against an accused person; and one or more dispositions relating to the charges brought against an accused person.

(2) "Basic identification information" means the name, birth date, last-known address, physical description, and sex of any person.

(3) "Criminal justice agency" means any court with criminal jurisdiction and any agency of the state or of any county, city and county, home rule city and county, home rule city or county, city, town, territorial charter city, governing boards of institutions of higher education, school district, special district, judicial district, or law enforcement authority which performs any activity directly relating to the detection or investigation of crime; the apprehension, pretrial release, posttrial release,

prosecution, correctional supervision, rehabilitation, evaluation, or treatment of accused persons or criminal offenders; or criminal identification activities or the collection, storage, or dissemination of arrest and criminal records information.

(4) "Criminal justice records" means all books, papers, cards, photographs, tapes, recordings, or other documentary materials; regardless of form or characteristics, which are made, maintained, or kept by any criminal justice agency in the state for use in the exercise of functions required or authorized by law or administrative rule.

(5) "Custodian" means the official custodian or any authorized person having personal custody and control of the criminal justice records in question.

(6) "Disposition" means a decision not to file criminal charges after arrest; the conclusion of criminal proceedings, including conviction, acquittal, or acquittal by reason of insanity; the dismissal, abandonment, or indefinite postponement of criminal proceedings; formal diversion from prosecution; sentencing, correctional supervision, and release from correctional supervision, including terms and conditions thereof; outcome of appellate review of criminal proceedings; or executive clemency.

(7) "Official action" means an arrest; indictment; charging by information; 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 correctional or rehabilitative programs; and any decision to formally discipline, reclassify, or relocate any person under criminal sentence.

(8) "Official custodian" means any officer or employee of the state or any agency, institution, or political subdivision thereof who is responsible for the maintenance, care, and keeping of criminal justice records, regardless of whether such records are in his actual personal custody and control.

(9) "Person" means any natural person, corporation, partnership, firm, or association.

(10) "Person in interest" means the person who is the primary subject of a criminal justice record or any representative designated by said person by power of attorney or notarized authorization; except that, if the subject of the record is under legal disability, "person in interest" means and includes his parents or duly appointed legal representative.

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24-72-303. Records of official actions required - open to inspection. (1) Each official action as defined in this part 3 shall be recorded by the particular criminal justice agency taking the official action. Such records of official actions shall be maintained by the particular criminal justice agency which took the action and shall be open for inspection by any person at reasonable times, except as provided in this part 3 or as otherwise provided by law. The official custodian of any records of official actions may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested record of official action of a criminal justice agency is not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the agency which has custody or control of the record in question.

(3) If the requested record of official action of a criminal justice agency is in the custody and control of the person to whom application is made but is in active use or in storage and therefore not available at the time an applicant asks to examine it, the custodian shall forthwith notify the applicant of this fact in writing, if requested by the applicant. If requested by the applicant, the custodian shall set a date and hour within three working days at which time the record will be available for inspection.

24-72-304. Inspection of criminal justice records. (1) Except for records of official actions which must be maintained and released pursuant to this part 3, all criminal justice records, at the discretion of the official custodian, may be open for inspection by any person at reasonable times, except as otherwise provided by law, and the official custodian of any such records may make such rules and regulations with reference to the inspection of such records as are reasonably necessary for the protection of such records and the prevention of unnecessary interference with the regular discharge of the duties of the custodian or his office.

(2) If the requested criminal justice records are not in the custody or control of the person to whom application is made, such person shall forthwith notify the applicant of this fact in writing, if requested by the applicant. In such notification, he shall state, in detail to the best of his knowledge and belief, the reason for the absence of the records from his custody or control, their location, and what person then has custody or control of the records.

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(2) If the custodian does not have facilities for making copies, printouts, or photographs of records which the applicant has the right to inspect, the applicant shall be granted access to the records for the purpose of making copies, printouts, or photographs. The copies, printouts, or photographs shall be made while the records are in the possession, custody, and control of the custodian thereof and shall be subject to the supervision of such custodian. When practical, they shall be made in the place where the records are kept, but, if it is impractical to do so, the custodian may allow other arrangements to be made for this purpose. If other facilities are necessary, the cost of providing them shall be paid by the person desiring a copy, printout, or photograph of the records. The official custodian may establish a reasonable schedule of times for making copies, printouts, or photographs and may charge the same fee for the services rendered by him or his deputy in supervising the copying, printing out, or photographing as he may charge for furnishing copies under subsection (1) of this section.

24-72-307. Challenge to accuracy and completeness - appeals. (1) Any person in interest who is provided access to any criminal justice records pursuant to this part 3 shall have the right to challenge the accuracy and completeness of records to which he has been given access, insofar as they pertain to him, and to request that said records be corrected.

(2) If the custodian refuses to make the requested correction, the person in interest may request a written statement of the grounds for the refusal, which statement shall be furnished forthwith.

(3) In the event that the custodian requires additional

time to evaluate the merit of the request for correction, he shall so notify the applicant in writing forthwith. The custodian shall then have thirty days from the date of his receipt of the request for correction to evaluate the request and to make a determination of whether to grant or refuse the request, in whole or in part, which determination shall be forthwith communicated to the applicant in writing.

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(7) Any person denied access to inspect any criminal justice record covered by this part 3 may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why said custodian should not permit the inspection of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the denial of inspection was proper, it shall order the custodian to permit such inspection and, upon a finding that the denial was arbitrary or capricious, it may order the custodian to pay

the applicant's court costs and attorney fees in an amount to be determined by the court. Upon a finding that the denial of inspection of a record of an official action was arbitrary or capricious, the court may also order the custodian personally to pay to the applicant a penalty in an amount not to exceed twenty-five dollars for each day that access was improperly denied.

24-72-305.5. Access to records - denial by custodian - use of records to obtain information for solicitation. Records of official actions and criminal justice records and the names, addresses, telephone numbers, and other information in such records shall not be used by any person for the purpose of soliciting business for pecuniary gain. The official custodian shall deny any person access to records of official actions and criminal justice records unless such person signs a statement which affirms that such records shall not be used for the direct solicitation of business for pecuniary gain.

24-72-306. Copies, printouts, or photographs of criminal justice records - fees authorized. (1) Criminal justice agencies may assess reasonable fees, not to exceed actual costs, including but not limited to personnel and equipment, for the search, retrieval, and copying of criminal justice records and may waive fees at their discretion. Where fees for certified copies or other copies, printouts, or photographs of such records are specifically prescribed by law, such specific fees shall apply. Where the criminal justice agency is an agency or department of any county or municipality, the amount of such fees shall be established by the governing body of the county or municipality.

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(3) If the requested records are not in the custody and control of the criminal justice agency to which the request is directed but are in the custody and control of a central repository for criminal justice records pursuant to law, the criminal justice agency to which the request is directed shall forward the request to the central repository. If such a request is to be forwarded to the central repository, the criminal justice agency receiving the request shall do so forthwith and shall so advise the applicant forthwith. The central repository shall forthwith reply directly to the applicant.

24-72-304. Inspection of criminal justice records.
(4) (a) The name of any victim of sexual assault or of alleged sexual assault shall be deleted from any criminal justice record prior to the release of such record TO ANY INDIVIDUAL OR AGENCY OTHER THAN A CRIMINAL JUSTICE AGENCY when such record bears the notation "SEXUAL ASSAULT" prescribed by this subsection (4).

24-72-305. Allowance or denial of inspection - grounds - procedure - appeal. (1) The custodian of criminal justice records may allow any person to inspect such records or any portion thereof except on the basis of any one of the following grounds or as provided in subsection (5) of this section:

(a) Such inspection would be contrary to any state statute;

(b) Such inspection is prohibited by rules promulgated by the supreme court or by the order of any court.

(2) to (4) Repealed, L. 78, p. 407, section 4, effective May 5, 1978.

(5) On the ground that disclosure would be contrary to the public interest, and unless otherwise provided by law, the custodian may deny access to records of investigations conducted by or of intelligence information or security procedures of any sheriff, district attorney, or police department or any criminal justice investigatory files compiled for any other law enforcement purpose.

(6) If the custodian denies access to any criminal justice record, the applicant may request a written statement of the grounds for the denial, which statement shall be provided to the applicant within seventy-two hours, shall cite the law or regulation under which access is denied or the general nature of the public interest to be protected by the denial, and shall be furnished forthwith to the applicant.

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(4) Any person in interest whose request for correction of records is refused may apply to the district court of the district wherein the record is found for an order directing the custodian of such record to show cause why he should not permit the correction of such record. A hearing on such application shall be held at the earliest practical time. Unless the court finds that the refusal of correction was proper, it shall order the custodian to make such correction, and, upon a finding that the refusal was arbitrary or capricious, it may order the criminal justice agency for which the custodian was acting to pay the applicant's court costs and attorney fees in an amount to be determined by the court.

24-72-308. Sealing of records. (1.5) For the purpose of protecting the author of any correspondence which becomes a part of criminal justice records, the court having jurisdiction in the judicial district in which the criminal justice records are located may, in its discretion, with or without a hearing thereon, enter an order to seal any information, including, but not limited to, basic identification information contained in said correspondence. However, the court may, in its discretion, enter an order which allows the disclosure of sealed information to defense counsel or, if the defendant is not represented by counsel, to the defendant.

(3) Exceptions. (a) This section shall not apply to records pertaining to any class 1 or class 2 misdemeanor traffic offense or to any class A or class B traffic infraction.

(b) Court orders sealing records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

24-72-308. Sealing of records. (3) Exceptions. (c) This section shall not apply to records pertaining to ~~any sexual assault offense as defined in part 4 of article 3 of title 18, C.R.S., where a plea of guilty or nolo contendere has been entered, a plea agreement has been made, or arrangements have been made for deferred judgment, deferred prosecution, or deferred sentencing or where the defendant has been convicted of the offense~~ A CONVICTION OF AN OFFENSE FOR WHICH THE FACTUAL BASIS INVOLVED UNLAWFUL SEXUAL BEHAVIOR AS DEFINED IN SECTION 18-3-412.5 (1), C.R.S.

(d) THIS SECTION SHALL NOT APPLY TO ARREST AND CRIMINAL JUSTICE INFORMATION OR CRIMINAL JUSTICE RECORDS IN THE POSSESSION AND CUSTODY OF A CRIMINAL JUSTICE AGENCY WHEN INQUIRY CONCERNING THE ARREST AND CRIMINAL JUSTICE INFORMATION OR CRIMINAL JUSTICE RECORDS IS MADE BY ANOTHER CRIMINAL JUSTICE AGENCY.

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24-72-308. Sealing of records. (1) (a) Any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged, in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

(b) (I) Any petition to seal criminal records shall include a listing of each custodian of the records to whom the sealing order is directed and any information which accurately and completely identifies the records to be sealed.

(II) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the prosecuting attorney by certified mail, the arresting agency, and any other person or agency identified by the petitioner.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of such order. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

(d) Upon the entry of an order to seal the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such records exist with respect to such person.

(e) Inspection of the records included in an order sealing criminal records may thereafter be permitted by the court only upon petition by the person who is the subject of such records or by the prosecuting attorney and only for those purposes named in such petition.

(f) (I) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction which comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall have no right to privacy or privilege which justifies his refusal to answer to any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

(g) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

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(1.5) For the purpose of protecting the author of any correspondence which becomes a part of criminal justice records, the court having jurisdiction in the judicial district in which the criminal justice records are located may, in its discretion, with or without a hearing thereon, enter an order to seal any information, including, but not limited to, basic identification information contained in said correspondence. However, the court may, in its discretion, enter an order which allows the disclosure of sealed information to defense counsel or, if the defendant is not represented by counsel, to the defendant.

(2) Advisements. Whenever a defendant has charges against him dismissed, is acquitted, or is sentenced following a conviction, the court shall provide him with a written advisement of his rights concerning the sealing of his criminal justice records if he complies with the applicable provisions of this section.

(3) Exceptions. (a) This section shall not apply to records pertaining to:

- (I) Any class 1 or class 2 misdemeanor traffic offense;
- (II) Any class A or class B traffic infraction; or
- (III) Any conviction for a violation of section 42-4-1301 (1) or (2), C.R.S.

(b) Court orders sealing records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

(c) This section shall not apply to records pertaining to any sexual assault offense as defined in part 4 of article 3 of title 18, C.R.S., where a plea of guilty or nolo contendere has been entered, a plea agreement has been made, or arrangements have been made for deferred judgment, deferred prosecution, or deferred sentencing or where the defendant has been convicted of the offense.

ANNOTATIONS

Source: L. 92: (1.5) added and (3) amended, pp. 281, 1106, 1, 7, effective July 1. L. 95: (3)(a) amended, p. 314, 1, effective July 1.

Law reviews. For article, "Sealing Criminal Records in Colorado", see 21 Colo. Law. 247 (1992).

An individual may deny his past criminal record. Subsection (3)(f)(I) (now subsection (1)(f)(I)) clearly allows an individual to deny past criminal involvement if the criminal record has been sealed pursuant to the provisions of subsection (3)(c)(I) (now subsection (1)(c)(I)). In making a determination, the trial court should consider the severity of the offense sought to be sealed, the time which has elapsed since the conviction, the subsequent criminal history of the petitioner, and the need for the government agency to retain the records. *D.W.M. v. District Court*, 751 P.2d 74 (Colo. 1988); *People v. Bushu*, 876 P.2d 106 (Colo. App. 1994).

Where a petitioner requests to seal criminal records of an acquittal, the court may also consider factors relating to the strength of the case, petitioner's age and employment history, and various consequences if the records are not sealed. The balance test allows for consideration of other factors on a case-by-case basis. *People v. Bushu*, 876 P.2d 106 (Colo. App. 1994).

Petitioner's punishment was increased retroactively in violation of the ex post facto clause of the Colorado constitution when petitioner was denied the automatic entry of an order limiting access to records relating to the charge against her because the trial court applied an amendment of the statute enacted after petitioner committed her crime. *In re R.B.*, 815 P.2d 999 (Colo. App. 1991).

The opportunity to petition and to have the balancing test applied in a sealing under this section is not a vested or a substantive right. *People v. K.B.*, 843 P.2d 1326 (Colo. 1993).

Therefore, where petitioner was convicted prior to the 1988 amendment to subsection (1)(a) but did not petition for sealing prior to the amendment, applying the provisions of the amendment to the petitioner did not violate the constitutional prohibition against retrospective legislation. *People v. K.B.*, 843 P.2d 1326 (Colo. 1993).

24-72-308. Sealing of records. (1) (a) Any person in interest may petition the district court of the district in which any arrest and criminal records information pertaining to said person in interest is located for the sealing of all of said records, except basic identification information, if the records are a record of official actions involving a criminal offense for which said person in interest was not charged, in any case which was completely dismissed, or in any case in which said person in interest was acquitted.

(b) (I) Any petition to seal criminal records shall include a listing of each custodian of the records to whom the sealing order is directed and any information which accurately and completely identifies the records to be sealed.

(II) Upon the filing of a petition, the court shall set a date for a hearing and shall notify the prosecuting attorney by certified mail, the arresting agency, and any other person or agency identified by the petitioner.

(c) After the hearing described in subparagraph (II) of paragraph (b) of this subsection (1) is conducted and if the court finds that the harm to the privacy of the petitioner or dangers of unwarranted adverse consequences to the petitioner outweigh the public interest in retaining the records, the court may order such records, except basic identification information, to be sealed. Any order entered pursuant to this paragraph (c) shall be directed to every custodian who may have custody of any part of the arrest and criminal records information which is the subject of the order. Whenever a court enters an order sealing criminal records pursuant to this paragraph (c), the petitioner shall provide the Colorado bureau of investigation and every custodian of such records with a copy of such order. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

(d) Upon the entry of an order to seal the records, the petitioner and all criminal justice agencies may properly reply, upon any inquiry in the matter, that no such records exist with respect to such person.

(e) Inspection of the records included in an order sealing criminal records may thereafter be permitted by the court only upon petition by the person who is the subject of such records or by the prosecuting attorney and only for those purposes named in such petition.

(f) (I) Employers, educational institutions, state and local government agencies, officials, and employees shall not, in any application or interview or in any other way, require an applicant to disclose any information contained in sealed records. An applicant need not, in answer to any question concerning arrest and criminal records information that has been sealed, include a reference to or information concerning such sealed information and may state that no such action has ever occurred. Such an application may not be denied solely because of the applicant's refusal to disclose arrest and criminal records information that has been sealed.

(II) Subparagraph (I) of this paragraph (f) shall not preclude the bar committee of the Colorado state board of law examiners from making further inquiries into the fact of a conviction which comes to the attention of the bar committee through other means. The bar committee of the Colorado state board of law examiners shall have a right to inquire into the moral and ethical qualifications of an applicant, and the applicant shall have no right to privacy or privilege which justifies his refusal to answer to any question concerning arrest and criminal records information that has come to the attention of the bar committee through other means.

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(g) Nothing in this section shall be construed to authorize the physical destruction of any criminal justice records.

(2) **Advisements.** Whenever a defendant has charges against him dismissed, is acquitted, or is sentenced following a conviction, the court shall provide him with a written advisement of his rights concerning the sealing of his criminal justice records if he complies with the applicable provisions of this section.

(3) **Exceptions.** (a) This section shall not apply to records pertaining to any class 1 or class 2 misdemeanor traffic offense or to any class A or class B traffic infraction.

(b) Court orders sealing records of official actions entered pursuant to this section shall not limit the operation of rules of discovery promulgated by the supreme court of Colorado.

24-72-309. Violation - penalty. Any person who willfully and knowingly violates the provisions of this part 3 is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than one hundred dollars, or by imprisonment in the county jail for not more than ninety days, or by both such fine and imprisonment.

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Government State

24-30-606. Existing and new equipment, personnel, applications, systems, subject to approval of director. On and after July 1, 1968, no automated data processing equipment shall be purchased, leased, or otherwise acquired by any state department, institution, or agency, nor shall any new automated data processing personnel be added to the state service, nor shall any new applications, systems, or programs begin except upon the written approval of the director, nor shall any automated data processing equipment presently leased or operated by any state department, institution, or agency continue to be so leased or operated after July 1, 1969, unless certified by the director to be in accordance with the approved plan.

24-30-607. Reports. (1) On or before December 1 of each year, the director shall prepare and submit the following reports and such other information as he deems advisable, including budgetary requirements, to the governor and the general assembly:

(a) A report on the use and cost of all automated data processing equipment which is owned, leased, or operated by the state government, including the cost of acquiring or leasing such equipment and a detailed report on the annual cost of operating such equipment including the cost of personnel, supplies, and other expenses in connection therewith.

(b) A complete inventory of all automated data processing equipment which is presently on order or otherwise scheduled for use by the state government or which has been requested of the division by any agency pursuant to the provisions of section 24-30-606, together with an estimate of the annual cost of acquiring or leasing such equipment and a detailed estimate of the annual cost of operating such equipment including the cost of personnel, supplies, and other expenses in connection therewith and the director's recommendations thereon.

(c) A report listing by agency the existing and requested uses, applications, and programs of automated data processing including such explanation and analysis as the director may deem advisable together with his recommendations thereon and specifically including, with respect to requested uses, applications, and programs, his recommendations for priorities in implementing the same.

PART 1

GENERAL PROVISIONS

30-10-101. Offices - inspection of records - failure to comply - penalty.

(1) (a) Every sheriff, county clerk and recorder, county treasurer, and clerk of the district and county courts shall keep his or her respective office at the county seat of the county and in the office provided by the county, if any such has been provided, or, if there is none provided, then at such place as the board of county commissioners shall direct. Subject to the provisions of part 2 of article 72 of title 24, C.R.S., and any judicially recognized right of privacy, all books and papers required to be in such offices shall be open to the examination of any person, but no person, except parties in interest or their attorneys, shall have the right to examine pleadings or other papers filed in any cause pending in such court.

(b) Notwithstanding the provisions of paragraph (a) of this subsection (1), the sheriff, county clerk and recorder, county treasurer, clerk of the district, and county courts may maintain his or her office at a location other than the county seat when authorized to do so pursuant to part 1 of article 5 of title 13, C.R.S.

(2) Any person or corporation and their employees engaged in making abstracts or abstract books shall have the right, during usual business hours and subject to such rules and regulations as the officer having the custody of such records may prescribe, to inspect and make memoranda, copies, or photographs of the contents of all such books and papers for the purpose of their business; but any such officer may make reasonable and general regulations concerning the inspection of such books and papers by the public. If, for the purpose of making such photographs, it becomes necessary to remove such records from the room where they are usually kept to some other room in the courthouse where such photographic apparatus may be

installed for such purpose, the county clerk and recorder, in his discretion, may charge to the person or corporation making such photographic reproductions a fee of ten dollars per hour for the service of the deputy who has charge of such records while they are being so photographed; but such fees shall not be charged to one person or corporation unless the same fee is likewise charged to every person or corporation photographing such records.

(3) If any person or officer refuses or neglects to comply with the provisions of this section, he shall forfeit for each day he so refuses or neglects the sum of five dollars, to be collected by civil action, in the name of the people of the state of Colorado, and pay it into the school fund; but this shall not interfere with or take away any right of action for damages by any person injured by such neglect or refusal.