

SEALING CRIMINAL RECORDS

Presented by the 12th Judicial District Access to
Justice Committee

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■ Resources:

- Courts' Website: [coloradojudicial.gov](https://www.coloradojudicial.gov)
 - *"Self Help and Forms" tab, top center of the webpage*
 - *Click on the drop-down arrow and select "Self Help Resources"*
 - *Select "Criminal Cases"*
 - *Select "Seal My Case"*
- 12JD Self Help Resources & Services:
<https://www.coloradojudicial.gov/courts/trial-courts/alamosa-county/self-help-resources-services?topic=10&wrapped=true>

What Does it Mean to Have a Record Sealed?

- A Record that is sealed is no longer accessible to the public.
 - *Upon inquiry, any agency who has the record must answer “No such record exists with respect to such person.”*
 - HOWEVER, this does not apply to inquiries by criminal justice agencies.
- The record is NOT destroyed and remains available to criminal justice agencies, the court, and the District Attorney.
 - *If your record is sealed and you are convicted again, your previous record may be unsealed by the court and/or available to the court, probation, and the District Attorney in sentencing.*
 - *Sealing a conviction does NOT vacate the conviction.*

Generally, Sealing a Record Requires Action and Not Everyone is Eligible

- In most instances, your record does not go away automatically after the passage of time.
 - *The procedures differ depending on the type of record, but most require you to take at least some action. However, as we'll discuss, there are a couple procedures in which sealing is intended to be automatic.*
- Eligibility is limited.
 - *Eligibility and process for having your record sealed is specifically defined by statute.*
 - *They both can change if the legislature decides to make changes.*
 - *More types of adult convictions are now eligible to be sealed than in previous years.*
 - *However, certain types of records are almost never eligible, such as conviction records involving sexual assault or other crimes of violence.*

What to expect from this clinic:

■ Topics covered in this presentation:

- *Sealing a Case – Simplified Process*
- *Sealing Arrest and Criminal Records*
- *Sealing Municipal Conviction Records*
- *Sealing Underage Alcohol or Marijuana Convictions*
- *Sealing Criminal Conviction Records*
- *Sealing Multiple Criminal Conviction Records*

■ Topics NOT covered in this presentation:

- *Expungement of Juvenile Records*
- *Appeals, Writs, and Challenges to the Underlying Conviction*
- *Sex Offender De-Registration Process*
- *Petition for Relief from Collateral Consequences*

For more information on topics not covered here today, you can consult with an attorney, go to www.coloradojudicial.gov and/or contact your district's Self-Represented Litigant Coordinator.

Sealing Criminal Justice Records other than Convictions

Simplified Process

See C.R.S § 24-72-705

- In General:
- The court is required to order a defendant's records sealed in four situations *unless* the defendant is charged with an offense that falls under the Victim Rights Act.
- If eligible, the sealing process is intended to be automatic.
- If the records were eligible to be sealed but were not, a defendant is still permitted to file a motion into the case in the county where the criminal record exists.
 - *There is no fee/cost for filing such motion.*

Sealing Criminal Justice Records other than Convictions

Simplified Process Continued

- To qualify to have your record automatically sealed, you must meet one of the requirements:
 - *You were acquitted of all counts in the case.*
 - *Your case was completely dismissed.*
 - *You completed a diversion agreement. See C.R.S § 18-1.3-101.*
 - *You completed a deferred judgment and sentence and all counts have been dismissed. See C.R.S § 18-1.3-102.*

***NOTE:** *If your case was dismissed as part of a plea agreement in another case, you cannot have the dismissed case sealed until the case in which you pled guilty would be eligible to be sealed. See C.R.S. 24-72-703(12)(II).*

Simplified Process Continued

- Other criminal records that cannot be sealed or, for which sealing is not automatic.
 - *The only charge(s) is/are class 1 misdemeanor traffic offenses, class 2 misdemeanor traffic offenses, class A traffic infractions, and/or class B traffic infractions.*
 - *Deferred judgment and sentence for an offense for which the factual basis involved unlawful sexual behavior. (C.R.S § 16-22-102(9)).*
 - *Deferred judgment and sentence for an offense concerning traffic control laws related to the holder of a commercial driver's license, or operator of a commercial motor vehicle. (C.R.S § 42-2-402).*
 - *Underage alcohol, marijuana, and paraphernalia offenses per C.R.S § 18-13-122.*
 - *Charges that were dismissed pursuant to C.R.S § 16-8.5-116, which relates to competency issues.*
 - *Many Charges that are included in the Victim Rights Act (VRA); these offenses require the court to set a hearing.*
 - See next slide for a list of charges.

Crimes Covered by VRA

- 1st Degree Murder; 2nd Degree Murder; Manslaughter; Criminally Negligent Homicide; Vehicular Homicide; Various Assault Offenses; Menacing; 1st Degree Kidnapping; 2nd Degree Kidnapping; Various Sexual Assault Offenses; Invasion of Privacy for Sexual Gratification; Robbery; Aggravated Robbery; Aggravated Robbery of Controlled Substances; Incest; Aggravated Incest; Child Abuse; Sexual Exploitation of Children; Crimes against At-Risk Adults or At-Risk Juveniles; Domestic Violence Offenses; Stalking; Bias-Motivated Offenses; Careless Driving Resulting in Death of Another Person; Failure to Stop at the Scene of an Accident Resulting in Death or Serious Bodily Injury of Another Person; Retaliation Against a Witness/Victim; Intimidating a Witness/Victim; Aggravated Intimidation of a Witness/Victim; Tampering with a Witness/Victim; Indecent Exposure; Violation of a Protection Order Against a Person Charged with Sexual Assault Crime; Human Trafficking; 1st Degree Burglary; Retaliation Against Judge/Elected Official/Prosecutor/Juror; Child Prostitution (or Solicitation/Procurement/Pimping/Inducement/Patronizing a Prostituted Child); Posting a Private Image for Harassment/Pecuniary Gain; or Criminal Attempt/Conspiracy/Being an Accessory with respect to any of the aforementioned Offenses.

Simplified Process Continued

- Step 1: Complete the Forms.
 - *There are instructions on the courts' website (JDF 491).*
 - *Motion to Seal JDF 477 – complete entire form.*
 - *Proposed Orders JDF 478, JDF 492, JDF493 – Complete only the caption of these forms.*
- Step 2: File into the existing case.
 - *No fee for this sealing procedure.*
- Step 3: Court will Review Motion.
 - *The court will either deny the motion, grant the motion, or set it for hearing.*

Simplified Process Continued

- Step 4: Await word from the Court regarding a hearing.
 - *If hearing is set, be prepared to answer questions regarding your request to have your case sealed. The Court will set a return date no later than thirty-five days after the motion is filed. If there is no objection from the DA/victim, the Court will grant the motion and vacate the hearing.*
 - *As of November 2024, courts must allow defendants, named victims, any witnesses, and the prosecution to appear in person or remotely. A request for remote participation must be raised at least 48 hours before the hearing, as courts have discretion to prohibit a “requested change in participation.”*
 - *At the hearing, the District Attorney and victim in the case will be given the opportunity to appear and participate as well.*
 - *The court will consider the harm to your privacy and any unwarranted adverse consequences to you **versus** the public’s interest in retaining access to the records.*

Sealing Adult Records – Arrest and Records Other than Convictions When No Charges Filed See C.R.S 24-72-704

- In General:
- A Petition may be filed in the county where the arrest occurred.
- A new district court civil case will be opened.
- A Filing Fee of \$224 is required. If eligible, file a motion to proceed without payment (JDF 205) along with the proposed order (JDF 206).
 - *For instructions to move to waive fees, see JDF 205(I).*

Sealing Adult Records – Arrest and Records Other than Convictions When No Charges Filed

- In order to qualify to have your criminal record sealed, you must meet one of the following requirements:
 - *You completed a diversion agreement and no criminal charges were ever filed. see C.R.S 18-1.3-101.*
 - *You have an arrest record, but you were not charged in court and the statute of limitations has run.*
 - *You have an arrest record, but you were not charged in court, the statute of limitations has not run but you are no longer being investigated by law enforcement for the offense.*
 - ***NOTE:** *If no charges were filed as part of a plea agreement in another case, you cannot have the arrest records sealed until the case in which you pled guilty would be eligible to be sealed. See C.R.S. 24-72-703(12)(II).*

Sealing Adult Records – Arrest and Records Other Than Convictions Continued

- Step 1: Gather Information.
 - *Court Records (if any)*
 - *Arrest or Police Records*
 - *Colorado Bureau of Investigation (CBI) Report*
<https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>
 - Will help with accuracy of information of the arrest. (dates, agencies, case numbers, etc.).
 - \$4.00 fee, immediate name-based check.
- *This criminal history report must be obtained (i) no more than 20 days before you file your Petition or (ii) no more than 10 days after you file your Petition.

Sealing Adult Records – Arrest and Records Other Than Convictions Continued

- Step 2: Complete Forms.
 - *Petition to Seal Arrest and Criminal Records When No Charges Filed JDF 417 – Complete Entire Form*
 - *Proposed Orders JDF 435, JDF 418, JDF 419 – Complete Caption Only*
- Step 3: File New Case with the court.
 - *Pay \$224 filing fee or, if eligible, file motion to waive the filing fee (forms JDF 205 and JDF 206).*
 - For instructions to move to waive fees, see JDF 205(I)

Sealing Adult Records – Arrest and Records Other Than Convictions

Continued

- Step 4: Be prepared for Hearing (if applicable).
 - *The court may deny your request without a hearing if it finds based on the face of your petition that you are not eligible to have your record sealed.*
 - *If hearing is set be prepared to answer questions regarding your request to have your case sealed.*
 - The court will consider the harm to your privacy and any unwarranted adverse consequences to you **versus** the public's interest in retaining access to the records.
 - *As of November 2024, courts must allow defendants, named victims, any witnesses, and the prosecution to appear in person or remotely. A request for remote participation must be raised at least 48 hours before the hearing, as courts have discretion to prohibit a “requested change in participation.”*
 - *Before the hearing, the District Attorney and/or law enforcement may file an objection to your request. If no objections are filed, the court shall vacate the hearing and grant your request.*

Sealing of Criminal Conviction – Municipal Record

See C.R.S. 24-72-703
and C.R.S 24-72-708

- In General:
- A Petition may be filed in the county where the Municipal arrest record or conviction is located.
- The case will be opened as a new district court civil case.
- A filing Fee of \$224 is required. If eligible, you may file a motion to proceed without payment (JDF 205) and the corresponding proposed order (JDF 206).
 - *For instructions to move to waive fees, see JDF 205(I).*

Sealing of Criminal Conviction - Municipal Record Continued

- You may file a Petition in the District Court in the County where the Municipal conviction record exists if ALL of the following are true:
 - *The Petition is filed three or more years after the final date of disposition or the release from supervision, whichever is later.*
 - *You have not been convicted of a felony, misdemeanor, or misdemeanor traffic offense since the date of final disposition or the release from supervision. ***
 - *Your case is not for a misdemeanor traffic offense IF you have a commercial driver's license or learner's permit or are an operator of a commercial vehicle (see C.R.S. 42-2-402 for definitions).*

***See exception in next slide*

Sealing of Criminal Conviction – Municipal Record Continued

- If you have had a conviction within three years from the final disposition/end of supervision for the municipal record you wish to seal, you may still be eligible if ALL of the following are true:
 - *The record you want sealed is not for municipal assault or battery involving domestic violence or any other municipal violation involving domestic violence.*
 - *Your subsequent conviction was a single offense that was not a felony and did not involve domestic violence (see C.R.S. 18-6-800.3(1)), unlawful sexual behavior (see C.R.S. 16-22-102 (9)), or child abuse (see C.R.S. 18-6-401).*
 - *You have not been convicted of a felony, misdemeanor, or misdemeanor traffic offense in the ten or more years since the date of final disposition of all criminal proceedings against you in the subsequent conviction or release from supervision in the subsequent conviction, whichever is later.*
 - In other words, if there is conviction AFTER the municipal conviction, a motion to seal the municipal conviction may be filed 10 years after the final disposition of all criminal proceedings for the subsequent case or the date of release from supervision as it relates to the subsequent case.

Sealing of Criminal Conviction – Municipal Record Continued

- Step 1: Gather Information.
 - *There are instructions on the courts' website (JDF 682)*
 - *Court Records (if any)*
 - *Municipal Court Records*
 - *Arrest or Police Records*
 - *Colorado Bureau of Investigation (CBI) Report*
<https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>
 - Will help with accuracy of information of the arrest. (dates, agencies, case numbers, etc.).
 - \$4.00 fee, immediate name-based check.
- *This criminal history report must be obtained (i) no more than 20 days before you file your Petition or (ii) no more than 10 days after you file your Petition.

Sealing of Criminal Conviction – Municipal Record Continued

- Step 2: Complete Forms.
 - *Petition to Seal Criminal Conviction Municipal Records JDF 683—Complete Entire Form*
 - *Proposed Orders JDF 684, JDF 685, JDF 686 – Complete Caption Only*
- Step 3: File New Case with the court.
 - *Pay filing fee \$224 or (if eligible) file motion to waive the filing fee – forms JDF 205 and JDF 206*
 - *For instructions to move to waive fees, see JDF 205(I)*

Sealing of Criminal Conviction – Municipal Record Continued

- Step 4: Be prepared for Hearing (if one is set).
 - *If the court finds that based on the face of the petition, you are not eligible to have your record sealed, the court may deny your request without a hearing.*
 - *If hearing is set be prepared to answer questions regarding your request to have your case sealed.*
 - *As of November 2024, courts must allow defendants, named victims, any witnesses, and the prosecution to appear in person or remotely. A request for remote participation must be raised at least 48 hours before the hearing, as courts have discretion to prohibit a “requested change in participation.”*
 - *At the hearing, the court will consider the harm to your privacy and any unwarranted adverse consequences to you **versus** the public’s interest in retaining access to the records.*

Sealing Underage Alcohol/Marijuana Record

See C.R.S 18-13-122

- In General:
 - *Called a Petition to Seal (not expunge)*
 - *No filing fee*
 - *Filed in same case as original offense*
 - *Law changed in July 2014*
 - Prior to that date, only applied to underage alcohol; after that date, applied to both underage alcohol and underage marijuana
 - Also changed some of the procedures
 - For offenses committed prior to 7/1/2014, old law applies; for offenses committed on or after 7/1/2014, new law applies

Sealing Underage Alcohol/Marijuana Record Continued

- YOU MAY NOT NEED TO FILE A PETITION:
- After 8/10/22, first convictions will automatically be sealed. For two or more convictions, follow the procedure for sealing convictions, which is covered later in this presentation (instructions – JDF 611; Motion – JDF 612; Proposed Orders – JDF 613, 614, & 615).
- If your offense was committed after 7/1/14 AND at least one of the following is true, then the court should have automatically ordered your record sealed:
 - *Your case was dismissed.*
 - *You received a deferred sentence or diversion and were successful in the completion of all terms and conditions.*
 - *For a first-time conviction, you successfully completed court-ordered substance abuse education.*

Sealing Underage Alcohol/Marijuana Record Continued

Offenses committed before 7/1/2014

- Since the offense, you have not been arrested for, charged with, or convicted of any felony, misdemeanor, or petty offense.

Offenses Committed on or after 7/1/2014

- At least one year has passed since the date of your conviction, and
- You have not been arrested for, charged with, or convicted of any felony, misdemeanor, or petty offense following the date of your conviction.

Sealing Criminal Convictions

See 24-72-701, 703, and
706 through 708

- In General:
- A Motion can be filed into the case where the conviction occurred.
 - *You are required to notify the District Attorney of your Motion.*
- A Motion can be filed once every twelve-month period.
- A \$65 fee is required or a motion to waive the fee may be filed. You may file a motion to file without payment (JDF 205) and the corresponding proposed order (JDF 206).
 - *For instructions to move to waive fees, see JDF 205(I).*

Sealing Criminal Convictions – Not Eligible

C.R.S. 24-72-706(2)

DUIs and DWAls
(42-2-1301(1)
and (2))

Traffic Cases or
infractions

Any class 1, 2 or 3
felony or level 1
drug felony

Crime of Violence
§18-1.3-406

Conviction for child
abuse or any
wrongs to
children*

Conviction for
unlawful sexual
behavior, any
level*

Underlying factual
basis of Domestic
Violence*

Felony Conviction
listed in the Victim
Rights Act

Extraordinary Risk
Crime

Conviction for a crime
involving extraordinary
aggravating
circumstances under
18-1.3-401(8)

Crime involving a
pregnant victim

Prostitution

Cruelty to
Animals*

Identity theft

Special Offender
under 18-18-407

Pandering

Sealing Criminal Convictions—Not Eligible *Exception*

- If your conviction is for a misdemeanor that falls into one of the categories that are not eligible for sealing, you may still be able to have your conviction sealed if:
 - *The District Attorney consents to the sealing; OR*
 - *The court finds, by clear and convincing evidence, that your need for sealing of the record is significant and substantial, the passage of time is such that the you are no longer a threat to public safety, and the public disclosure of the record is no longer necessary to protect or inform the public. C.R.S. 24-72-706(2)(b).*

Sealing Criminal Convictions – Eligibility Time Frames

Petty Offenses
Drug Petty Offenses

1 year or more
after final
disposition

Class 2 Misdemeanors
Class 3 Misdemeanors
Any Drug Misdemeanor

2 Years or more
after final
disposition

Class 4 Felonies
Class 5 Felonies
Class 6 Felonies
Level 2, 3, or 4 DFs
Class 1 Misdemeanors

3 years or more
after final
disposition

All Other Offenses

5 years or more
after final
disposition

Offenses Committed by Victims of Human Trafficking: Any Time After Conviction

C.R.S. 24-72-711

“Record sealing – change in the law – conduct no longer prohibited.”

- “. . . If a statutory change legalizes previously prohibited conduct, a defendant may file a motion in any case in which a conviction record exists pertaining to the defendant’s conviction for an offense that is no longer prohibited by statute and provide notice of the motion to the district attorney. A defendant may file the motion after the date of the final disposition against the defendant or the date of the defendant’s release from supervision, whichever is later.” *Id.* at (1).
- No fees for this, and no CBI background check is required. *Id.* at (2) & (4).
- The prosecution can only object if it has a good-faith belief that the offense is still illegal at the time the motion is filed. *Id.* at (3).

Sealing Criminal Convictions Continued

- Step 1: Gather Information.

- *There are instructions on the court's website (JDF 611)*
- *Court Records*
- *Arrest or Police Records*
- *Colorado Bureau of Investigation (CBI) Report*

<https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>

- Will help with accuracy of information of the arrest. (dates, agencies, case numbers, etc.).
- \$4.00 fee, immediate name-based check.

*This criminal history report must be obtained (i) no more than 20 days before you file your Petition or (ii) no more than 10 days after you file your Petition.

Sealing Criminal Convictions Continued

- Step 2: Complete Forms.
 - *Motion to Seal Criminal Conviction Records JDF 612 – Complete the entire form*
 - *Proposed Orders JDF 613, JDF 614, JDF 615 – Complete caption of the form only*
- Step 3: File Motion into the case.
 - *A \$65 fee is required or a motion to waive the fee may be filed.*
 - *You must file a verified copy of your criminal history with your Motion and it must be obtained in the 30-day window required by statute.*

Sealing Criminal Convictions Continued

- Step 4: Be prepared for Hearing (if applicable).
 - *If the court finds that based on the face of your Motion, you are not eligible to have your record sealed, the court may deny your request without a hearing.*
 - *If a hearing is set be prepared to answer questions regarding your request to have your case sealed.*
 - *As of November 2024, courts must allow defendants, named victims, any witnesses, and the prosecution to appear in person or remotely. A request for remote participation must be raised at least 48 hours before the hearing, as courts have discretion to prohibit a “requested change in participation.”*
 - *The District Attorney and/or victim in your case may file an objection and/or participate in the hearing.*
 - *The court will consider the harm to your privacy and any unwarranted adverse consequences to you **versus** the public’s interest in retaining access to the conviction records.*

Sealing Multiple Criminal Convictions

See 24-72-709

-added by HB21-1214

-effective 9/6/21

- A Petition is filed using JDF 641. This triggers the opening of a district civil case.
 - *You are required to notify the District Attorney of your Motion.*
- This type of Petition **cannot** be filed in the underlying criminal cases.
- If the multiple conviction records are in different jurisdictions, the Petitioner must file JDF 641 in **each jurisdiction** along with a copy of each petition filed in other jurisdiction(s).
- A \$224 fee is required or you may file a motion to file without payment (JDF 205) and the corresponding proposed order (JDF 206).
 - *For instructions to move to waive fees, see JDF 205(I).*

Sealing Multiple Criminal Convictions

offenses that cannot be sealed

M1 or M2 Traffic Offense(s) and Class A or B Traffic Infractions	DUIs or DWALs
Involving Domestic Violence	Involving Unlawful Sexual Behavior
Involving Child Abuse	Extraordinary Aggravating Circumstances
Extraordinary Risk Crimes	Crimes Involving Pregnant Victim
Special Offender	Pandering
Various Sexual Assault Offenses	Prostitution
Any Felony Offense Covered by the Victim Rights Act	Various Crimes of Violence
Class 1, 2, or 3 Felony or Level 1 Drug Felony	Identity Theft
Unlawful Termination of Pregnancy	Felony Offenses Involving Animal Cruelty

Sealing Multiple Criminal Convictions

Eligibility Time Frames

Petty Offenses
Drug Petty Offenses

2 years or more
after final disposition or
release from supervision

No More Than 5 Convictions

Class 2 Misdemeanors
Class 3 Misdemeanors
Drug Misdemeanor 1
Drug Misdemeanor 2

5 Years or more
after final disposition
or release from
supervision

No More Than 4 Convictions

Class 1 Misdemeanors
Class 4 Felonies
Class 5 Felonies
Class 6 Felonies
Drug Felonies

10 years or more
after final disposition
or release from
supervision

No More Than 3 Convictions

Sealing Multiple Criminal Convictions Continued

- Step 1: Gather Information.

- *There are instructions on the courts' website (JDF 640)*
- *Court records from each case*
- *Arrest or police records*
- *Colorado Bureau of Investigation (CBI) Report*

<https://www.cbirecordscheck.com/Index.aspx?AspxAutoDetectCookieSupport=1>

- \$4.00 fee, immediate name-based check

***Note:** This criminal history report must be obtained (i) no more than 20 days before you file your Petition or (ii) no more than 10 days after you file your Petition.

Sealing Multiple Criminal Convictions Continued

- Step 2: Complete Forms.
 - *Petition to Seal Multiple Conviction Records JDF 641 – Complete the entire form*
 - *Proposed Orders (JDF 614, 641, 642) – Complete caption of the form only*
- Step 3: File Motion into the new district civil case.
 - *A \$224 fee is required or a motion to waive the fee may be filed.*
 - *If eligible, you may file a motion to file without payment (JDF 205) and the corresponding proposed order (JDF 206).*
 - *For instructions to move to waive fees, see JDF 205(I).*

Sealing Multiple Criminal Convictions Continued

- Step 4: Be prepared for Hearing (if applicable).
 - *If the court finds that based on the face of your Motion, you are not eligible to have your records sealed, the court may deny your request without a hearing.*
 - *If hearing is set be prepared to answer questions regarding your request to have your case sealed.*
 - *As of November 2024, courts must allow defendants, named victims, any witnesses, and the prosecution to appear in person or remotely. A request for remote participation must be raised at least 48 hours before the hearing, as courts have discretion to prohibit a “requested change in participation.”*
 - *The District Attorney and/or victim(s) in your cases may file an objection and/or participate in the hearing.*
 - *The court will consider the harm to your privacy and any unwarranted adverse consequences to you **versus** the public’s interest in retaining access to the conviction records.*

Forms...

- All forms and proposed orders are available at
 - *The Court Clerk's Office in the Courthouse*
 - *Courts' Website: [coloradojudicial.gov](https://www.coloradojudicial.gov)*
 - "Self Help and Forms" tab, top center of the webpage
 - Click on the drop-down arrow and select "Self Help Resources"
 - Select "Criminal Cases"
 - Select "Seal My Case"

- 12JD Self Help Page - <https://www.coloradojudicial.gov/courts/trial-courts/alamosa-county/self-help-resources-services?topic=10&wrapped=true>

Other Resources

Colorado Legal Services

- *Fill out application to see if you are eligible for services*

Colorado Bar Association

- Can help find a private attorney
 - 303-860-1115
- www.licensedlawyer.org/co

Self-Represented Litigant Coordinator

- Cannot provide legal advice but can help with forms and explain procedures.