

**Second Regular Session
Seventieth General Assembly
STATE OF COLORADO**

PREAMENDED

*This Unofficial Version Includes Committee
Amendments Not Yet Adopted on Second Reading*

LLS NO. 16-1021.01 Michael Dohr x4347

HOUSE BILL 16-1265

HOUSE SPONSORSHIP

Melton and Esgar, Salazar

SENATE SPONSORSHIP

(None),

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING EXPUNGEMENT OF ARREST RECORDS BASED ON**
102 **MISTAKEN IDENTITY.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://www.leg.state.co.us/billsummaries>.)

The bill requires a law enforcement agency to file a petition to expunge the arrest record of a person who is arrested as a result of mistaken identity and with no charges filed with the district court in the judicial district where the person was arrested. The law enforcement agency shall file the petition within 90 days after determining that the person was arrested based on mistaken identity. The court shall enter an

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
*Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.*

order of expungement within 90 days after receiving the petition. The bill prohibits employers, educational institutions, state and local government agencies, officials, and employees from, in any application or interview or in any other way, requiring an applicant to disclose information contained in expunged records.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add** 24-72-701.5 as
3 follows:

4 **24-72-701.5. Expungement of arrest record in case of mistaken**
5 **identity - definitions.** (1) (a) NOTWITHSTANDING ANY OTHER PROVISION
6 OF LAW, A COURT SHALL EXPUNGE THE ARREST AND CRIMINAL RECORDS
7 INFORMATION OF A PERSON WHO WAS ARRESTED AS A RESULT OF
8 MISTAKEN IDENTITY AND WHO DID NOT HAVE CHARGES FILED AGAINST HIM
9 OR HER.

10 (b) NO LATER THAN NINETY DAYS AFTER AN INVESTIGATION BY A
11 LAW ENFORCEMENT AGENCY FINDS THAT A PERSON WAS ARRESTED AS A
12 RESULT OF MISTAKEN IDENTITY AND NO CHARGES WERE FILED, THE LAW
13 ENFORCEMENT AGENCY THAT MADE THE ARREST SHALL PETITION THE
14 DISTRICT COURT IN THE JUDICIAL DISTRICT WHERE THE PERSON WAS
15 ARRESTED FOR AN EXPUNGEMENT ORDER FOR THE ARREST AND CRIMINAL
16 RECORDS INFORMATION MADE AS A RESULT OF THE MISTAKEN IDENTITY,
17 AT NO COST TO THE PERSON ARRESTED. A PETITION FILED PURSUANT TO
18 THIS PARAGRAPH (b) SHALL NOT BE SUBJECT TO A FILING FEE.

19 (c) NO LATER THAN NINETY DAYS AFTER RECEIVING THE PETITION,
20 THE COURT SHALL ORDER THE EXPUNGEMENT OF THE ARREST AND
21 CRIMINAL RECORDS INFORMATION AND ALL OTHER ADMINISTRATIVE
22 RECORDS OF THE LAW ENFORCEMENT AGENCY RELATING TO THE PERSON'S
23 ARREST AS A RESULT OF MISTAKEN IDENTITY.

1 (2) ANY ORDER ENTERED PURSUANT TO PARAGRAPH (c) OF
2 SUBSECTION (1) OF THIS SECTION MUST BE DIRECTED TO EVERY
3 CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART OF THE ARREST AND
4 CRIMINAL RECORDS INFORMATION THAT IS THE SUBJECT OF THE ORDER.
5 WHEN A COURT ENTERS AN ORDER EXPUNGING CRIMINAL RECORDS
6 PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, THE
7 PETITIONER SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION
8 AND EVERY CUSTODIAN OF SUCH RECORDS WITH A COPY OF THE ORDER.
9 THE PETITIONER SHALL PROVIDE A PRIVATE CUSTODIAN WITH A COPY OF
10 THE ORDER AND SEND THE PRIVATE CUSTODIAN AN ELECTRONIC
11 NOTIFICATION OF THE ORDER. EACH PRIVATE CUSTODIAN THAT RECEIVES
12 A COPY OF THE ORDER FROM THE PETITIONER SHALL REMOVE THE RECORDS
13 THAT ARE SUBJECT TO THE ORDER FROM ITS DATABASE. THEREAFTER, THE
14 COURT MAY ISSUE AN ORDER SEALING THE CIVIL CASE IN WHICH THE
15 RECORDS WERE SEALED.

16 (3) UPON THE ENTRY OF AN ORDER TO EXPUNGE THE RECORDS, THE
17 PETITIONER AND ALL CRIMINAL JUSTICE AGENCIES MAY PROPERLY REPLY,
18 UPON ANY INQUIRY INTO THE MATTER, THAT NO SUCH RECORDS EXIST
19 WITH RESPECT TO THE PERSON.

20 (4) EMPLOYERS, EDUCATIONAL INSTITUTIONS, STATE AND LOCAL
21 GOVERNMENT AGENCIES, OFFICIALS, AND EMPLOYEES SHALL NOT, IN ANY
22 APPLICATION OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN
23 APPLICANT TO DISCLOSE ANY INFORMATION CONTAINED IN EXPUNGED
24 RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION
25 CONCERNING ARREST AND CRIMINAL RECORDS INFORMATION THAT HAS
26 BEEN EXPUNGED, INCLUDE A REFERENCE TO OR INFORMATION
27 CONCERNING THE EXPUNGED INFORMATION AND MAY STATE THAT NO

1 SUCH ACTION HAS EVER OCCURRED. SUCH AN APPLICATION MAY NOT BE
2 DENIED SOLELY BECAUSE OF THE APPLICANT'S REFUSAL TO DISCLOSE
3 ARREST AND CRIMINAL RECORDS INFORMATION THAT HAS BEEN
4 EXPUNGED.

5 (5) FOR PURPOSES OF THIS SECTION:

6 (a) "LAW ENFORCEMENT AGENCY" MEANS THE COLORADO STATE
7 PATROL OR THE AGENCY OF A STATE OR LOCAL GOVERNMENT AUTHORIZED
8 TO ENFORCE THE LAWS OF COLORADO.

9 (b) "MISTAKEN IDENTITY" MEANS THE MISIDENTIFICATION BY A
10 WITNESS OR LAW ENFORCEMENT, CONFUSION ON THE PART OF A WITNESS
11 OR LAW ENFORCEMENT AS TO THE IDENTITY OF THE PERSON WHO
12 COMMITTED THE CRIME, MISINFORMATION PROVIDED TO LAW
13 ENFORCEMENT AS TO THE IDENTITY OF THE PERSON WHO COMMITTED THE
14 CRIME, OR SOME OTHER MISTAKE ON THE PART OF A WITNESS OR LAW
15 ENFORCEMENT AS TO THE IDENTITY OF THE PERSON WHO COMMITTED THE
16 CRIME.

17 **SECTION 2. Safety clause.** The general assembly hereby finds,
18 determines, and declares that this act is necessary for the immediate
19 preservation of the public peace, health, and safety.