

CHAPTER 393

GOVERNMENT - STATE

HOUSE BILL 08-1082

BY REPRESENTATIVE(S) Ferrandino, Carroll T., Casso, Judd, Labuda, McFadyen, McGihon, Stafford, and Todd;
also SENATOR(S) Bacon, Romer, and Tochtrop.

AN ACT

CONCERNING THE SEALING OF CRIMINAL JUSTICE RECORDS, AND MAKING AN APPROPRIATION IN CONNECTION THEREWITH.

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

SECTION 1. 24-72-308 (1) (a) (III), (2), and (3) (a), Colorado Revised Statutes, are amended to read:

24-72-308. Sealing of arrest and criminal records other than convictions.

(1) (a) (III) A 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 that was not charged or a case that was dismissed due to a plea agreement in a separate case, and if:

(A) The petition is filed ~~fifteen~~ TEN years or more after the date of the final disposition of all criminal proceedings against the person in interest; and

(B) The person in interest has not been charged for ~~any~~ A criminal offense in the ~~fifteen~~ TEN years since the date of the final disposition of all criminal proceedings against the person in interest.

(2) **Advisements.** (a) Whenever a defendant HAS APPEARED BEFORE THE COURT AND has charges against him OR HER dismissed OR NOT FILED, OR WHENEVER THE DEFENDANT is acquitted, ~~or is sentenced following a conviction~~, the court shall provide him OR HER with a written advisement of his OR HER rights PURSUANT TO THIS SECTION concerning the sealing of his OR HER criminal justice records if he OR SHE complies with the applicable provisions of this section.

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

(b) IN ADDITION TO, AND NOT IN LIEU OF, THE REQUIREMENT DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2), IF A DEFENDANT'S CASE IS DISMISSED AFTER A PERIOD OF SUPERVISION BY PROBATION, THE PROBATION DEPARTMENT, UPON THE TERMINATION OF THE DEFENDANT'S PROBATION, SHALL PROVIDE THE DEFENDANT WITH A WRITTEN ADVISEMENT OF HIS OR HER RIGHTS PURSUANT TO THIS SECTION CONCERNING THE SEALING OF HIS OR HER CRIMINAL JUSTICE RECORDS IF HE OR SHE COMPLIES WITH THE APPLICABLE PROVISIONS OF THIS SECTION.

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

(I) ~~Any~~ A class 1 or class 2 misdemeanor traffic offense;

(II) ~~Any~~ A class A or class B traffic infraction; or

(III) ~~Any~~ A conviction for a violation of section 42-4-1301 (1) or (2), C.R.S.

SECTION 2. Part 3 of article 72 of title 24, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SECTION to read:

24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances. (1) **Definitions.** FOR PURPOSES OF THIS SECTION, "CONVICTION RECORDS" MEANS ARREST AND CRIMINAL RECORDS INFORMATION AND ANY RECORDS PERTAINING TO A JUDGMENT OF CONVICTION.

(2) **Sealing of conviction records.** (a) (I) SUBJECT TO THE LIMITATIONS DESCRIBED IN SUBSECTION (4) OF THIS SECTION, A DEFENDANT MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH ANY CONVICTION RECORDS PERTAINING TO THE DEFENDANT ARE LOCATED FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT BASIC IDENTIFYING INFORMATION, IF:

(A) THE PETITION IS FILED TEN OR MORE YEARS AFTER THE DATE OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST THE DEFENDANT OR THE RELEASE OF THE DEFENDANT FROM SUPERVISION CONCERNING A CRIMINAL CONVICTION, WHICHEVER IS LATER; AND

(B) THE DEFENDANT HAS NOT BEEN CHARGED OR CONVICTED FOR A CRIMINAL OFFENSE IN THE TEN OR MORE YEARS SINCE THE DATE OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST HIM OR HER OR THE DATE OF THE DEFENDANT'S RELEASE FROM SUPERVISION, WHICHEVER IS LATER.

(II) AN ORDER SEALING CONVICTION RECORDS SHALL NOT DENY ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW ENFORCEMENT AGENCY, CRIMINAL JUSTICE AGENCY, PROSECUTING ATTORNEY, OR PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK ON AN INDIVIDUAL. AN ORDER SEALING CONVICTION RECORDS SHALL NOT BE CONSTRUED TO VACATE A CONVICTION. A CONVICTION SEALED PURSUANT TO THIS SECTION MAY BE USED BY A CRIMINAL JUSTICE AGENCY, LAW ENFORCEMENT AGENCY, COURT, OR PROSECUTING ATTORNEY FOR ANY LAWFUL PURPOSE RELATING TO THE INVESTIGATION OR PROSECUTION OF ANY CASE, INCLUDING BUT NOT LIMITED TO ANY SUBSEQUENT CASE THAT IS FILED AGAINST THE DEFENDANT, OR FOR ANY OTHER

LAWFUL PURPOSE WITHIN THE SCOPE OF HIS, HER, OR ITS DUTIES. IF A DEFENDANT IS CONVICTED OF A NEW CRIMINAL OFFENSE AFTER AN ORDER SEALING CONVICTION RECORDS IS ENTERED, THE COURT, ON ITS OWN MOTION OR UPON THE MOTION OF ANY PROSECUTING ATTORNEY, SHALL ORDER THE CONVICTION RECORDS TO BE UNSEALED. A PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A CRIMINAL HISTORY RECORD CHECK SHALL BE AUTHORIZED TO USE ANY SEALED CONVICTION FOR THE LAWFUL PURPOSE FOR WHICH THE CRIMINAL HISTORY RECORD CHECK IS REQUIRED BY LAW.

(III) CONVICTION RECORDS MAY NOT BE SEALED IF THE DEFENDANT STILL OWES RESTITUTION, FINES, COURT COSTS, LATE FEES, OR OTHER FEES ORDERED BY THE COURT IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL CONVICTION RECORDS, UNLESS THE COURT THAT ENTERED THE ORDER FOR RESTITUTION, FINES, COURT COSTS, LATE FEES, OR OTHER FEES HAS VACATED THE ORDER.

(b) (I) A PETITION TO SEAL CONVICTION RECORDS PURSUANT TO THIS SECTION SHALL INCLUDE A LISTING OF EACH CUSTODIAN OF THE RECORDS TO WHOM THE SEALING ORDER IS DIRECTED AND ANY INFORMATION THAT ACCURATELY AND COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED. A VERIFIED COPY OF THE DEFENDANT'S CRIMINAL HISTORY, CURRENT THROUGH AT LEAST THE TWENTIETH DAY PRIOR TO THE DATE OF THE FILING OF THE PETITION, SHALL BE SUBMITTED TO THE COURT BY THE DEFENDANT ALONG WITH THE PETITION AT THE TIME OF FILING, BUT IN NO EVENT LATER THAN THE TENTH DAY AFTER THE PETITION IS FILED. THE DEFENDANT SHALL BE RESPONSIBLE FOR OBTAINING AND PAYING FOR HIS OR HER CRIMINAL HISTORY RECORD.

(II) (A) UPON THE FILING OF A PETITION, THE COURT SHALL REVIEW THE PETITION AND DETERMINE WHETHER THERE ARE GROUNDS UNDER THIS SECTION TO PROCEED TO A HEARING ON THE PETITION. IF THE COURT DETERMINES THAT THE PETITION ON ITS FACE IS INSUFFICIENT OR IF THE COURT DETERMINES THAT, AFTER TAKING JUDICIAL NOTICE OF MATTERS OUTSIDE THE PETITION, THE DEFENDANT IS NOT ENTITLED TO RELIEF UNDER THIS SECTION, THE COURT SHALL ENTER AN ORDER DENYING THE PETITION AND MAIL A COPY OF THE ORDER TO THE DEFENDANT. THE COURT'S ORDER SHALL SPECIFY THE REASONS FOR THE DENIAL OF THE PETITION.

(B) IF THE COURT DETERMINES THAT THE PETITION IS SUFFICIENT ON ITS FACE AND THAT NO OTHER GROUNDS EXIST AT THAT TIME FOR THE COURT TO DENY THE PETITION UNDER THIS SECTION, THE COURT SHALL SET A DATE FOR A HEARING, AND THE DEFENDANT SHALL NOTIFY BY CERTIFIED MAIL THE PROSECUTING ATTORNEY, THE ARRESTING AGENCY, AND ANY OTHER PERSON OR AGENCY IDENTIFIED BY THE DEFENDANT.

(c) AFTER THE HEARING DESCRIBED IN SUBPARAGRAPH (II) OF PARAGRAPH (b) OF THIS SUBSECTION (2) IS CONDUCTED AND IF THE COURT FINDS THAT THE HARM TO THE PRIVACY OF THE DEFENDANT OR THE DANGERS OF UNWARRANTED, ADVERSE CONSEQUENCES TO THE DEFENDANT OUTWEIGH THE PUBLIC INTEREST IN RETAINING THE CONVICTION RECORDS, THE COURT MAY ORDER THE CONVICTION RECORDS, EXCEPT BASIC IDENTIFICATION INFORMATION, TO BE SEALED. IN MAKING THIS DETERMINATION, THE COURT SHALL, AT A MINIMUM, CONSIDER THE SEVERITY OF THE OFFENSE THAT IS THE BASIS OF THE CONVICTION RECORDS SOUGHT TO BE SEALED, THE CRIMINAL HISTORY OF THE DEFENDANT, AND THE NEED FOR THE GOVERNMENT

AGENCY TO RETAIN THE RECORDS. AN ORDER ENTERED PURSUANT TO THIS PARAGRAPH (c) SHALL BE DIRECTED TO EACH CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART OF THE CONVICTION RECORDS THAT ARE THE SUBJECT OF THE ORDER. WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS PURSUANT TO THIS PARAGRAPH (c), THE DEFENDANT SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE CONVICTION RECORDS WITH A COPY OF THE ORDER AND SHALL PAY TO THE BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL CONVICTION RECORDS IN THE CUSTODY OF THE BUREAU. THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS WERE SEALED.

(d) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2), UPON THE ENTRY OF AN ORDER TO SEAL THE CONVICTION RECORDS, THE DEFENDANT AND ALL CRIMINAL JUSTICE AGENCIES MAY PROPERLY REPLY, UPON AN INQUIRY IN THE MATTER, THAT CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE DEFENDANT.

(e) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2), INSPECTION OF THE RECORDS INCLUDED IN AN ORDER SEALING CONVICTION RECORDS MAY THEREAFTER BE PERMITTED BY THE COURT ONLY UPON PETITION BY THE DEFENDANT.

(f) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF PARAGRAPH (a) OF THIS SUBSECTION (2) OR IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (f), EMPLOYERS, STATE AND LOCAL GOVERNMENT AGENCIES, OFFICIALS, LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO DISCLOSE ANY INFORMATION CONTAINED IN SEALED CONVICTION RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION CONCERNING CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE A REFERENCE TO OR INFORMATION CONCERNING THE SEALED CONVICTION RECORDS AND MAY STATE THAT THE APPLICANT HAS NOT BEEN CRIMINALLY CONVICTED.

(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 THAT 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 NOT HAVE A RIGHT TO PRIVACY OR PRIVILEGE THAT JUSTIFIES HIS OR HER REFUSAL TO ANSWER A QUESTION CONCERNING SEALED CONVICTION RECORDS THAT HAVE COME TO THE ATTENTION OF THE BAR COMMITTEE THROUGH OTHER MEANS.

(III) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL NOT APPLY TO A CRIMINAL JUSTICE AGENCY OR TO AN APPLICANT TO A CRIMINAL JUSTICE AGENCY.

(IV) ANY MEMBER OF THE PUBLIC MAY PETITION THE COURT TO UNSEAL ANY FILE THAT HAS BEEN PREVIOUSLY SEALED UPON A SHOWING THAT CIRCUMSTANCES HAVE

COME INTO EXISTENCE SINCE THE ORIGINAL SEALING AND, AS A RESULT, THE PUBLIC INTEREST IN DISCLOSURE NOW OUTWEIGHS THE DEFENDANT'S INTEREST IN PRIVACY.

(g) THE OFFICE OF THE STATE COURT ADMINISTRATOR SHALL POST ON ITS WEB SITE A LIST OF ALL PETITIONS TO SEAL CONVICTION RECORDS THAT ARE FILED WITH A DISTRICT COURT. A DISTRICT COURT MAY NOT GRANT A PETITION TO SEAL CONVICTION RECORDS UNTIL AT LEAST THIRTY DAYS AFTER THE POSTING. AFTER THE EXPIRATION OF THIRTY DAYS FOLLOWING THE POSTING, THE PETITION TO SEAL CONVICTION RECORDS AND INFORMATION PERTINENT THERETO SHALL BE REMOVED FROM THE WEB SITE OF THE OFFICE OF THE STATE COURT ADMINISTRATOR.

(h) NOTHING IN THIS SECTION SHALL BE CONSTRUED TO AUTHORIZE THE PHYSICAL DESTRUCTION OF ANY CONVICTION RECORDS.

(i) NOTWITHSTANDING ANY PROVISION IN THIS SECTION TO THE CONTRARY, IN REGARD TO ANY CONVICTION OF A DEFENDANT RESULTING FROM A SINGLE CASE IN WHICH THE DEFENDANT IS CONVICTED OF MORE THAN ONE OFFENSE, RECORDS OF THE CONVICTION MAY BE SEALED PURSUANT TO THE PROVISIONS OF THIS SECTION ONLY IF THE RECORDS OF EVERY CONVICTION OF THE DEFENDANT RESULTING FROM THAT CASE MAY BE SEALED PURSUANT TO THE PROVISIONS OF THIS SECTION.

(3) **Advisements.** (a) WHENEVER A DEFENDANT IS SENTENCED FOLLOWING A CONVICTION OF AN OFFENSE DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, THE COURT SHALL PROVIDE HIM OR HER WITH A WRITTEN ADVISEMENT OF HIS OR HER RIGHTS CONCERNING THE SEALING OF HIS OR HER CONVICTION RECORDS PURSUANT TO THIS SECTION IF HE OR SHE COMPLIES WITH THE APPLICABLE PROVISIONS OF THIS SECTION.

(b) IN ADDITION TO, AND NOT IN LIEU OF, THE REQUIREMENT DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (3):

(I) IF A DEFENDANT IS SENTENCED TO PROBATION FOLLOWING A CONVICTION OF AN OFFENSE DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, THE PROBATION DEPARTMENT, UPON THE TERMINATION OF THE DEFENDANT'S PROBATION, SHALL PROVIDE THE DEFENDANT WITH A WRITTEN ADVISEMENT OF HIS OR HER RIGHTS CONCERNING THE SEALING OF HIS OR HER CONVICTION RECORDS PURSUANT TO THIS SECTION IF HE OR SHE COMPLIES WITH THE APPLICABLE PROVISIONS OF THIS SECTION.

(II) IF A DEFENDANT IS RELEASED ON PAROLE FOLLOWING A CONVICTION OF AN OFFENSE DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (4) OF THIS SECTION, THE DEFENDANT'S PAROLE OFFICER, UPON THE TERMINATION OF THE DEFENDANT'S PAROLE, SHALL PROVIDE THE DEFENDANT WITH A WRITTEN ADVISEMENT OF HIS OR HER RIGHTS CONCERNING THE SEALING OF HIS OR HER CONVICTION RECORDS PURSUANT TO THIS SECTION IF HE OR SHE COMPLIES WITH THE APPLICABLE PROVISIONS OF THIS SECTION.

(4) (a) **Applicability.** EXCEPT AS OTHERWISE PROVIDED IN PARAGRAPH (b) OF THIS SUBSECTION (4), THE PROVISIONS OF THIS SECTION SHALL APPLY ONLY TO CONVICTION RECORDS PERTAINING TO JUDGMENTS OF CONVICTION ENTERED ON AND AFTER JULY 1, 2008, FOR:

(I) ANY PETTY OFFENSE IN VIOLATION OF A PROVISION OF ARTICLE 18 OF TITLE 18, C.R.S.;

(II) ANY MISDEMEANOR IN VIOLATION OF A PROVISION OF ARTICLE 18 OF TITLE 18, C.R.S.;

(III) ANY CLASS 5 OR CLASS 6 FELONY IN VIOLATION OF A PROVISION OF ARTICLE 18 OF TITLE 18, C.R.S.; EXCEPT THAT THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CONVICTION RECORDS PERTAINING TO A JUDGMENT OF CONVICTION FOR A CLASS 5 OR CLASS 6 FELONY FOR THE SALE, MANUFACTURING, OR DISPENSING OF A CONTROLLED SUBSTANCE, AS DEFINED IN SECTION 18-18-102 (5), C.R.S.; ATTEMPT OR CONSPIRACY TO COMMIT THE SALE, MANUFACTURING, OR DISPENSING OF A CONTROLLED SUBSTANCE; OR POSSESSION WITH THE INTENT TO MANUFACTURE, DISPENSE, OR SELL A CONTROLLED SUBSTANCE;

(IV) ANY OFFENSE THAT WOULD BE CLASSIFIED AS A CLASS 5 OR 6 FELONY IN VIOLATION OF A PROVISION OF ARTICLE 18 OF TITLE 18, C.R.S., IF THE OFFENSE WERE TO HAVE OCCURRED ON JULY 1, 2008.

(b) FOR ANY JUDGMENT OF CONVICTION ENTERED PRIOR TO JULY 1, 2008, FOR WHICH THE DEFENDANT WOULD OTHERWISE QUALIFY FOR RELIEF UNDER THIS SECTION, THE DEFENDANT MAY OBTAIN AN ORDER FROM THE COURT TO SEAL CONVICTION RECORDS IF:

(I) THE PROSECUTING ATTORNEY DOES NOT OBJECT TO THE SEALING; AND

(II) THE DEFENDANT PAYS TO THE OFFICE OF THE PROSECUTING ATTORNEY ALL REASONABLE ATTORNEY FEES AND COSTS OF THE PROSECUTING ATTORNEY RELATING TO THE PETITION TO SEAL PRIOR TO THE ENTRY OF AN ORDER SEALING THE CONVICTION RECORDS; AND

(III) THE DEFENDANT PAYS:

(A) THE FILING FEE REQUIRED BY LAW; AND

(B) AN ADDITIONAL FILING FEE OF TWO HUNDRED DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE FILING OF THE PETITION TO SEAL RECORDS.

(c) THE ADDITIONAL FILING FEES COLLECTED UNDER SUB-SUBPARAGRAPH (B) OF SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS SUBSECTION (4) SHALL BE TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH FUND CREATED IN SECTION 13-32-101 (1.5), C.R.S.

(d) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO CONVICTION RECORDS THAT ARE IN THE POSSESSION OF A CRIMINAL JUSTICE AGENCY WHEN AN INQUIRY CONCERNING THE CONVICTION RECORDS IS MADE BY ANOTHER CRIMINAL JUSTICE AGENCY.

(5) **Rules of discovery - rules of evidence - witness testimony.** COURT ORDERS SEALING RECORDS OF OFFICIAL ACTIONS PURSUANT TO THIS SECTION SHALL NOT LIMIT THE OPERATIONS OF:

(a) THE RULES OF DISCOVERY OR THE RULES OF EVIDENCE PROMULGATED BY THE SUPREME COURT OF COLORADO OR ANY OTHER STATE OR FEDERAL COURT; OR

(b) THE PROVISIONS OF SECTION 13-90-101, C.R.S., CONCERNING WITNESS TESTIMONY.

SECTION 3. Appropriation. (1) In addition to any other appropriation, there is hereby appropriated, out of any moneys in the judicial stabilization cash fund created in section 13-32-101 (1.5), Colorado Revised Statutes, not otherwise appropriated, to the judicial department, for the fiscal year beginning July 1, 2008, the sum of four hundred forty-five thousand seven hundred eighty-one dollars (\$445,781) and 6.2 FTE, or so much thereof as may be necessary, for the implementation of this act.

(2) In addition to any other appropriation, there is hereby appropriated, to the department of public safety, for allocation to the Colorado bureau of investigation, for the fiscal year beginning July 1, 2008, the sum of thirty-six thousand eight hundred ninety-three dollars (\$36,893) cash funds and 0.9 FTE, or so much thereof as may be necessary, for the implementation of this act. Said sum shall be from payments collected by the bureau from defendants for costs related to sealing criminal conviction records.

SECTION 4. Effective date. This act shall take effect July 1, 2008.

SECTION 5. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 2, 2008