

CHAPTER 69

GOVERNMENT - STATE

HOUSE BILL 11-1167

BY REPRESENTATIVE(S) Ferrandino, Lee, Levy, Duran, Fields, Kagan, Labuda, Wilson;
also SENATOR(S) Nicholson, Steadman, Aguilar, Bacon, Giron, Guzman, Tochtrop.

AN ACT**CONCERNING THE PETITION PROCESS FOR THE SEALING OF CERTAIN DRUG OFFENSE RECORDS.**

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

SECTION 1. 24-72-308.5 (2) (a) (II), (2) (c), and (2) (d) and the introductory portion to 24-72-308.5 (4) (a), Colorado Revised Statutes, are amended to read:

24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2008, and prior to July 1, 2011. (2) (a) (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.

(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

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

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, THE NUMBER OF CONVICTIONS AND DATES OF THE CONVICTIONS FOR WHICH THE DEFENDANT IS SEEKING TO HAVE THE RECORDS SEALED, 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 PUBLIC conviction records do not exist with respect to the defendant.

(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, AND PRIOR TO JULY 1, 2011, for:

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

24-72-308.6. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2011.

(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 THE PETITION IS FILED WITHIN THE TIME FRAME DESCRIBED IN SUBPARAGRAPH (II) OF THIS PARAGRAPH (a).

(II) (A) IF THE OFFENSE IS A PETTY OFFENSE OR A CLASS 2 OR 3 MISDEMEANOR IN ARTICLE 18 OF TITLE 18, C.R.S., THE PETITION MAY BE FILED THREE YEARS AFTER THE LATER OF 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.

(B) IF THE OFFENSE IS A CLASS 1 MISDEMEANOR IN ARTICLE 18 OF TITLE 18, C.R.S., THE PETITION MAY BE FILED FIVE YEARS AFTER THE LATER OF 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.

(C) IF THE OFFENSE IS A CLASS 5 FELONY OR CLASS 6 FELONY DRUG POSSESSION OFFENSE DESCRIBED IN SECTION 18-18-403.5 OR 18-18-404, C.R.S., OR SECTION 18-18-405, C.R.S., AS IT EXISTED PRIOR TO AUGUST 11, 2010, THE PETITION MAY BE FILED SEVEN YEARS AFTER THE LATER OF 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.

(D) FOR ALL OTHER OFFENSES IN ARTICLE 18 OF TITLE 18, C.R.S., THE PETITION MAY BE FILED TEN YEARS AFTER THE LATER OF 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.

(III) (A) IF A PETITION IS FILED FOR THE SEALING OF A PETTY OFFENSE IN ARTICLE 18 OF TITLE 18, C.R.S., THE COURT SHALL ORDER THE RECORD SEALED AFTER THE PETITION IS FILED, THE FILING FEE IS PAID, AND THE CRIMINAL HISTORY FILED WITH THE PETITION AS REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (2) DOCUMENTS TO THE COURT THAT THE DEFENDANT HAS NOT BEEN CHARGED OR CONVICTED FOR A CRIMINAL OFFENSE SINCE THE DATE OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST HIM OR HER OR SINCE THE DATE OF THE DEFENDANT'S RELEASE FROM SUPERVISION, WHICHEVER IS LATER.

(B) IF A PETITION IS FILED FOR THE SEALING OF A CLASS 1, CLASS 2, OR CLASS 3 MISDEMEANOR IN ARTICLE 18 OF TITLE 18, C.R.S., THE DEFENDANT SHALL PAY THE FILING FEE AND PROVIDE NOTICE OF THE PETITION TO THE DISTRICT ATTORNEY. THE DISTRICT ATTORNEY SHALL DETERMINE WHETHER TO OBJECT TO THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5 (2) (c). IF THE DISTRICT ATTORNEY DOES NOT OBJECT, THE COURT SHALL ORDER THAT THE RECORD BE SEALED AFTER THE DEFENDANT DOCUMENTS TO THE COURT THAT HE OR SHE HAS NOT BEEN CHARGED OR CONVICTED FOR A CRIMINAL OFFENSE 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. IF THE DISTRICT ATTORNEY OBJECTS TO THE PETITION, THE COURT SHALL SET THE MATTER FOR HEARING. TO ORDER THE RECORD SEALED, THE CRIMINAL HISTORY FILED WITH THE PETITION AS REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL DOCUMENT TO THE COURT THAT THE DEFENDANT HAS NOT BEEN CHARGED WITH OR CONVICTED OF A CRIMINAL OFFENSE SINCE THE DATE OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST HIM OR HER OR SINCE THE DATE OF THE DEFENDANT'S RELEASE FROM SUPERVISION, WHICHEVER IS LATER. THE COURT SHALL DECIDE THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5 (2) (c).

(C) IF A PETITION IS FILED FOR THE SEALING OF A CLASS 5 OR CLASS 6 FELONY POSSESSION OFFENSE DESCRIBED IN SECTION 18-18-403.5 OR 18-18-404, C.R.S., OR SECTION 18-18-405, C.R.S., AS IT EXISTED PRIOR TO AUGUST 11, 2010, THE DEFENDANT SHALL PAY THE FILING FEE AND PROVIDE NOTICE OF THE PETITION TO THE DISTRICT ATTORNEY. THE DISTRICT ATTORNEY SHALL DETERMINE WHETHER TO OBJECT TO THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5

(2) (c). IF THE DISTRICT ATTORNEY DOES NOT OBJECT, THE COURT MAY DECIDE THE PETITION WITH OR WITHOUT THE BENEFIT OF A HEARING. IF THE DISTRICT ATTORNEY OBJECTS TO THE PETITION, THE COURT SHALL SET THE MATTER FOR HEARING. TO ORDER THE RECORD SEALED, THE CRIMINAL HISTORY FILED WITH THE PETITION AS REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL DOCUMENT TO THE COURT THAT THE DEFENDANT HAS NOT BEEN CHARGED OR CONVICTED FOR A CRIMINAL OFFENSE SINCE THE DATE OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST HIM OR HER OR SINCE THE DATE OF THE DEFENDANT'S RELEASE FROM SUPERVISION, WHICHEVER IS LATER. THE COURT SHALL DECIDE THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5 (2) (c).

(D) IF A PETITION IS FILED FOR ANY OFFENSE IN ARTICLE 18 OF TITLE 18, C.R.S., THAT IS NOT COVERED BY SUB-SUBPARAGRAPHS (A) TO (C) OF THIS SUBPARAGRAPH (III), THE DEFENDANT SHALL PAY THE FILING FEE AND PROVIDE NOTICE OF THE PETITION TO THE DISTRICT ATTORNEY. THE DISTRICT ATTORNEY SHALL DETERMINE WHETHER TO OBJECT TO THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5 (2) (c). IF THE DISTRICT ATTORNEY OBJECTS TO THE PETITION, THE COURT SHALL DISMISS THE PETITION. IF THE DISTRICT ATTORNEY DOES NOT OBJECT, THE COURT SHALL SET THE PETITION FOR A HEARING. TO ORDER THE RECORD SEALED, THE CRIMINAL HISTORY FILED WITH THE PETITION AS REQUIRED BY PARAGRAPH (b) OF THIS SUBSECTION (2) SHALL DOCUMENT TO THE COURT THAT THE DEFENDANT HAS NOT BEEN CHARGED OR CONVICTED FOR A CRIMINAL OFFENSE 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. THE COURT SHALL DECIDE THE PETITION AFTER CONSIDERING THE FACTORS IN SECTION 24-72-308.5 (2) (c).

(IV) AN ORDER ENTERED PURSUANT TO THIS SECTION 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 SECTION, 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 THAT ARE 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.

(V) 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 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.

(VI) 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) 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 THE VERIFIED COPY OF HIS OR HER CRIMINAL HISTORY RECORD.

(c) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (V) 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 PUBLIC CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE DEFENDANT.

(d) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (V) 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.

(e) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (V) OF PARAGRAPH (a) OF THIS SUBSECTION (2) OR IN SUBPARAGRAPHS (II) AND (III) OF THIS PARAGRAPH (e), 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) THE PROVISIONS OF SUBPARAGRAPH (I) OF THIS PARAGRAPH (e) 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 (e) 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.

(f) 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.

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

(h) 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 (2) 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 (2) 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 FOR AN OFFENSE DESCRIBED IN PARAGRAPH (a) OF SUBSECTION (2) 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.** THE PROVISIONS OF THIS SECTION SHALL APPLY ONLY TO CONVICTION RECORDS PERTAINING TO JUDGMENTS OF CONVICTION ENTERED ON OR AFTER JULY 1, 2011.

(b) FOR ANY JUDGMENT OF CONVICTION ENTERED PRIOR TO JULY 1, 2011, FOR WHICH THE DEFENDANT WOULD OTHERWISE QUALIFY FOR RELIEF UNDER THIS SECTION, THE DEFENDANT MAY, AFTER WAITING THE REQUIRED WAITING PERIOD AND FULFILLING ALL OTHER STATUTORY REQUIREMENTS UNDER THIS SECTION, OBTAIN AN ORDER FROM THE COURT TO SEAL CONVICTION RECORDS IF:

(I) THE DISTRICT 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 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.

(d) IF THE DISTRICT ATTORNEY OBJECTS TO THE PETITION, THE COURT SHALL DISMISS THE PETITION.

(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 COLORADO RULES OF CIVIL PROCEDURE RELATED TO DISCOVERY OR THE COLORADO 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. 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: March 29, 2011