

CHAPTER 72

COURTS

HOUSE BILL 11-1203

BY REPRESENTATIVE(S) Lee, Ferrandino, Levy, Tyler, Barker, Duran, Fields, Kagan, Labuda, Nikkel, Pabon, Pace, Schafer S., Solano, Vigil, Wilson;
also SENATOR(S) Nicholson, Aguilar, Bacon, Giron, Guzman, Hudak, Jahn, Newell, Steadman, Tochtrop, Williams S.

AN ACT

CONCERNING A REQUIREMENT THAT PRIVATE CUSTODIANS OF CRIMINAL RECORDS REMOVE RECORDS FROM THEIR DATABASES WHEN A COURT ORDERS THE CRIMINAL RECORDS SEALED.

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

SECTION 1. 24-72-302, Colorado Revised Statutes, is amended BY THE ADDITION OF A NEW SUBSECTION to read:

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

(11) "PRIVATE CUSTODIAN" MEANS A PRIVATE ENTITY THAT HAS CUSTODY OF THE CRIMINAL JUSTICE RECORDS IN QUESTION AND IS IN THE BUSINESS OF PROVIDING THE INFORMATION TO OTHERS.

SECTION 2. 24-72-308 (1) (c), Colorado Revised Statutes, is amended to read:

24-72-308. Sealing of arrest and criminal records other than convictions.
(1) (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. THE

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

PETITIONER SHALL PROVIDE A PRIVATE CUSTODIAN WITH A COPY OF THE ORDER AND SEND THE PRIVATE CUSTODIAN AN ELECTRONIC NOTIFICATION OF THE ORDER. EACH PRIVATE CUSTODIAN THAT RECEIVES A COPY OF THE ORDER FROM THE PETITIONER SHALL REMOVE THE RECORDS THAT ARE SUBJECT TO AN ORDER FROM ITS DATABASE. Thereafter, the petitioner may request and the court may grant an order sealing the civil case in which the records were sealed.

SECTION 3. 24-72-308.5 (2) (c), Colorado Revised Statutes, is amended to read:

24-72-308.5. Sealing of criminal conviction records information for offenses involving controlled substances. (2) **Sealing of conviction records.** (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~~ THE PETITIONER SHALL PROVIDE A PRIVATE CUSTODIAN WITH A COPY OF THE ORDER AND SEND THE PRIVATE CUSTODIAN AN ELECTRONIC NOTIFICATION OF THE ORDER. EACH PRIVATE CUSTODIAN THAT RECEIVES A COPY OF THE ORDER FROM THE PETITIONER SHALL REMOVE THE RECORDS THAT ARE SUBJECT TO AN ORDER FROM ITS DATABASE. THE DEFENDANT 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.

SECTION 4. Act subject to petition - effective date. This act shall take effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 10, 2011, if adjournment sine die is on May 11, 2011); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part shall not take effect unless approved by the people at the general election to be held in November 2012 and shall take effect on the date of the official declaration of the vote thereon by the governor.

Approved: March 29, 2011