

**First Regular Session
Sixty-sixth General Assembly
STATE OF COLORADO**

PREAMENDED

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

LLS NO. 07-0358.01 Stephen Miller

HOUSE BILL 07-1107

HOUSE SPONSORSHIP

Cerbo,

SENATE SPONSORSHIP

(None),

House Committees

Judiciary
Appropriations

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE SEALING OF CRIMINAL JUSTICE RECORDS.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not necessarily reflect any amendments that may be subsequently adopted.)

Reduces the time from 15 years to 10 years that a person must wait before filing a petition to seal arrest and criminal records information pertaining to a criminal offense that was not charged or a case that was dismissed due to a plea agreement in a separate case. Requires a probation department or a parole officer under certain circumstances to advise a defendant of the right to seal criminal justice records.

Extends the criminal justice record sealing procedure to convictions. Permits a defendant, after 10 years following the completion of a sentence or release from supervision, whichever is later, to petition

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.*

the district court to seal criminal conviction records information ("conviction records"). Prohibits the sealing of conviction records if the defendant still owes court-ordered restitution, fines, or fees. Specifies the procedure for sealing conviction records. Requires the court, in making the decision whether to seal the conviction records, to weigh the privacy interests of the petitioner against the public interest in retaining the conviction records.

Prohibits employers and certain institutions and agencies from requiring an applicant to disclose information in sealed conviction records. Permits the bar committee of the state board of law examiners to make inquiries into the fact of a conviction that comes to the attention of the bar committee through other means. Requires a defendant to be advised of the right to seal conviction records by the court, the probation department, and the defendant's parole officer under the appropriate circumstances.

Prohibits the sealing of conviction records as to traffic offenses and infractions, any offense with an underlying factual basis involving unlawful sexual behavior, and crimes involving specified special circumstances for which enhanced sentencing is required. Specifies that court orders sealing conviction records shall not limit the operation of discovery rules in civil cases.

Specifies that the conviction records sealing procedure shall apply to judgments of conviction entered on and after July 1, 2007. Permits the procedure to apply to judgments of conviction entered on and after July 1, 1988, but before July 1, 2007, with the consent of the prosecuting attorney. Requires the supreme court to promulgate rules of procedure that establish appropriate time periods within which to file a petition to seal conviction records concerning judgments of conviction entered on and after July 1, 1988, but before July 1, 2007.

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

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

4 **24-72-308. Sealing of arrest and criminal records other than**
5 **convictions.** (1) (a) (III) A person in interest may petition the district
6 court of the district in which any arrest and criminal records information
7 pertaining to said person in interest is located for the sealing of all of said
8 records, except basic identification information, if the records are a record

1 of official actions involving a criminal offense that was not charged or a
2 case that was dismissed due to a plea agreement in a separate case, and
3 if:

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

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

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

17 (b) IN ADDITION TO, AND NOT IN LIEU OF, THE REQUIREMENT
18 DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2):

19 (I) ~~IF A DEFENDANT'S CASE IS DISMISSED AFTER A PERIOD OF~~
20 ~~SUPERVISION OR PROBATION, THE PROBATION DEPARTMENT, UPON THE~~
21 ~~TERMINATION OF THE DEFENDANT'S PROBATION, SHALL PROVIDE THE~~
22 ~~DEFENDANT WITH A WRITTEN ADVISEMENT OF HIS OR HER RIGHTS~~
23 ~~PURSUANT TO THIS SECTION CONCERNING THE SEALING OF HIS OR HER~~
24 ~~CRIMINAL JUSTICE RECORDS~~ IF HE OR SHE COMPLIES WITH THE
25 APPLICABLE PROVISIONS OF THIS SECTION.

26 (II) IF A DEFENDANT IS RELEASED ON PAROLE, THE DEFENDANT'S
27 PAROLE OFFICER, UPON THE TERMINATION OF THE DEFENDANT'S PAROLE,

1 SHALL PROVIDE THE DEFENDANT WITH A WRITTEN ADVISEMENT OF HIS OR
2 HER RIGHTS CONCERNING THE SEALING OF HIS OR HER CRIMINAL JUSTICE
3 RECORDS PURSUANT TO THIS SECTION IF HE OR SHE COMPLIES WITH THE
4 APPLICABLE PROVISIONS OF THIS SECTION.

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

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

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

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

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

14 **24-72-308.5. Sealing of criminal conviction records**
15 **information.** (1) **Definitions.** FOR PURPOSES OF THIS SECTION,
16 "CONVICTION RECORDS" MEANS ARREST AND CRIMINAL RECORDS
17 INFORMATION AND ~~ANY~~ RECORDS PERTAINING TO A JUDGMENT OF
18 CONVICTION.

19 (2) **Sealing of conviction records.** (a) (I) EXCEPT AS OTHERWISE
20 PROVIDED IN PARAGRAPH (b) OF SUBSECTION (5) OF THIS SECTION, ~~A~~
21 ~~DEFENDANT MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN WHICH~~
22 ~~ANY CONVICTION RECORDS PERTAINING TO THE DEFENDANT ARE LOCATED~~
23 ~~FOR THE SEALING OF THE CONVICTION RECORDS, EXCEPT BASIC~~
24 ~~IDENTIFYING INFORMATION, IF:~~

25 (A) ~~THE PETITION IS FILED TEN OR MORE YEARS AFTER THE DATE~~
26 ~~OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST THE~~
27 ~~DEFENDANT OR THE RELEASE OF THE DEFENDANT FROM SUPERVISION~~

1 CONCERNING A CRIMINAL CONVICTION, WHICHEVER IS LATER; AND

2 (B) THE DEFENDANT HAS NOT BEEN CHARGED OR CONVICTED FOR
3 A CRIMINAL OFFENSE IN THE TEN YEARS SINCE THE DATE OF THE FINAL
4 DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST HIM OR HER.

5 (II) AN ORDER SEALING CONVICTION RECORDS SHALL NOT DENY
6 ACCESS TO THE CRIMINAL RECORDS OF A DEFENDANT BY ANY COURT, LAW
7 ENFORCEMENT AGENCY, OR CRIMINAL JUSTICE AGENCY, ANY
8 PROSECUTING ATTORNEY, OR ANY PARTY OR AGENCY REQUIRED BY LAW
9 TO CONDUCT A CRIMINAL HISTORY RECORDS CHECK ON AN INDIVIDUAL.

10 AN ORDER SEALING CONVICTION RECORDS SHALL NOT BE CONSTRUED TO
11 VACATE A CONVICTION. A CONVICTION SEALED PURSUANT TO THIS
12 SECTION MAY BE USED BY ANY CRIMINAL JUSTICE AGENCY, LAW
13 ENFORCEMENT AGENCY, COURT, OR PROSECUTING ATTORNEY FOR ANY
14 LAWFUL PURPOSE RELATING TO THE INVESTIGATION OF ANY CRIMINAL
15 CASE OR FOR ANY OTHER LAWFUL PURPOSE WITHIN THE SCOPE OF THEIR
16 DUTIES. ANY PARTY OR AGENCY REQUIRED BY LAW TO CONDUCT A
17 CRIMINAL HISTORY RECORDS CHECK SHALL BE AUTHORIZED TO USE ANY
18 SEALED CONVICTION FOR THE LAWFUL PURPOSE FOR WHICH THE CRIMINAL
19 HISTORY RECORDS CHECK IS REQUIRED BY LAW.

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

26 (b) (I) A PETITION TO SEAL CONVICTION RECORDS SHALL INCLUDE
27 A LISTING OF EACH CUSTODIAN OF THE RECORDS TO WHOM THE SEALING

1 ORDER IS DIRECTED AND ANY INFORMATION THAT ACCURATELY AND
2 COMPLETELY IDENTIFIES THE RECORDS TO BE SEALED.

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

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

19 (c) AFTER THE HEARING DESCRIBED IN SUBPARAGRAPH (II) OF
20 PARAGRAPH (b) OF THIS SUBSECTION (2) IS CONDUCTED AND IF THE COURT
21 FINDS THAT THE HARM TO THE PRIVACY OF THE PETITIONER OR THE
22 DANGERS OF UNWARRANTED, ADVERSE CONSEQUENCES TO THE
23 PETITIONER OUTWEIGH THE PUBLIC INTEREST IN RETAINING THE
24 CONVICTION RECORDS, THE COURT MAY ORDER THE CONVICTION RECORDS,
25 EXCEPT BASIC IDENTIFICATION INFORMATION, TO BE SEALED. AN ORDER
26 ENTERED PURSUANT TO THIS PARAGRAPH (c) SHALL BE DIRECTED TO EACH
27 CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART OF THE CONVICTION

1 RECORDS THAT ARE THE SUBJECT OF THE ORDER. WHENEVER A COURT
2 ENTERS AN ORDER SEALING CONVICTION RECORDS PURSUANT TO THIS
3 PARAGRAPH (c), THE PETITIONER SHALL PROVIDE THE COLORADO BUREAU
4 OF INVESTIGATION AND EACH CUSTODIAN OF THE CONVICTION RECORDS
5 WITH A COPY OF THE ORDER. THEREAFTER, THE PETITIONER MAY REQUEST
6 AND THE COURT MAY GRANT AN ORDER SEALING THE CIVIL CASE IN WHICH
7 THE CONVICTION RECORDS WERE SEALED.

8 (d) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPH (II) OF
9 PARAGRAPH (a) OF THIS SUBSECTION (2), UPON THE ENTRY OF AN ORDER
10 TO SEAL THE CONVICTION RECORDS, THE PETITIONER AND ALL CRIMINAL
11 JUSTICE AGENCIES MAY PROPERLY REPLY, UPON AN INQUIRY IN THE
12 MATTER, THAT CONVICTION RECORDS DO NOT EXIST WITH RESPECT TO THE
13 PERSON WHO IS THE SUBJECT OF THE SEALED CONVICTION RECORDS.

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

18 (f) (I) EXCEPT AS OTHERWISE PROVIDED IN SUBPARAGRAPHS (II)
19 AND (III) OF THIS PARAGRAPH (f), EMPLOYERS, EDUCATIONAL
20 INSTITUTIONS, STATE AND LOCAL GOVERNMENT AGENCIES, OFFICIALS,
21 LANDLORDS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION OR
22 INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO DISCLOSE
23 ANY INFORMATION CONTAINED IN SEALED CONVICTION RECORDS. AN
24 APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION CONCERNING
25 CONVICTION RECORDS THAT HAVE BEEN SEALED, INCLUDE A REFERENCE
26 TO OR INFORMATION CONCERNING THE SEALED CONVICTION RECORDS AND
27 MAY STATE THAT THE APPLICANT HAS NOT BEEN CRIMINALLY CONVICTED.

1 AN APPLICATION MAY NOT BE DENIED SOLELY BECAUSE OF THE
2 APPLICANT'S REFUSAL TO DISCLOSE CONVICTION RECORDS THAT HAVE
3 BEEN SEALED.

4 (II) SUBPARAGRAPH (I) OF THIS PARAGRAPH (f) SHALL NOT
5 PRECLUDE THE BAR COMMITTEE OF THE COLORADO STATE BOARD OF LAW
6 EXAMINERS FROM MAKING FURTHER INQUIRIES INTO THE FACT OF A
7 CONVICTION THAT COMES TO THE ATTENTION OF THE BAR COMMITTEE
8 THROUGH OTHER MEANS. THE BAR COMMITTEE OF THE COLORADO STATE
9 BOARD OF LAW EXAMINERS SHALL HAVE A RIGHT TO INQUIRE INTO THE
10 MORAL AND ETHICAL QUALIFICATIONS OF AN APPLICANT, AND THE
11 APPLICANT SHALL NOT HAVE A RIGHT TO PRIVACY OR PRIVILEGE THAT
12 JUSTIFIES HIS OR HER REFUSAL TO ANSWER A QUESTION CONCERNING
13 SEALED CONVICTION RECORDS THAT HAVE COME TO THE ATTENTION OF
14 THE BAR COMMITTEE THROUGH OTHER MEANS.

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

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

20 (3) **Advisements.** (a) WHENEVER A DEFENDANT IS SENTENCED
21 FOLLOWING A CONVICTION, THE COURT SHALL PROVIDE HIM OR HER WITH
22 A WRITTEN ADVISEMENT OF HIS OR HER RIGHTS CONCERNING THE SEALING
23 OF HIS OR HER CONVICTION RECORDS PURSUANT TO THIS SECTION IF HE OR
24 SHE COMPLIES WITH THE APPLICABLE PROVISIONS OF THIS SECTION.

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

27 (I) IF A DEFENDANT IS SENTENCED TO PROBATION, THE PROBATION

1 DEPARTMENT, UPON THE TERMINATION OF THE DEFENDANT'S PROBATION,
2 SHALL PROVIDE THE DEFENDANT WITH A WRITTEN ADVISEMENT OF HIS OR
3 HER RIGHTS CONCERNING THE SEALING OF HIS OR HER CONVICTION
4 RECORDS PURSUANT TO THIS SECTION IF HE OR SHE COMPLIES WITH THE
5 APPLICABLE PROVISIONS OF THIS SECTION.

6 (II) IF A DEFENDANT IS RELEASED ON PAROLE, THE DEFENDANT'S
7 PAROLE OFFICER, UPON THE TERMINATION OF THE DEFENDANT'S PAROLE,
8 SHALL PROVIDE THE DEFENDANT WITH A WRITTEN ADVISEMENT OF HIS OR
9 HER RIGHTS CONCERNING THE SEALING OF HIS OR HER CONVICTION
10 RECORDS PURSUANT TO THIS SECTION IF HE OR SHE COMPLIES WITH THE
11 APPLICABLE PROVISIONS OF THIS SECTION.

12 (4) **Exceptions.** (a) THIS SECTION SHALL NOT APPLY TO RECORDS
13 PERTAINING TO:

14 (I) A CLASS 1 OR CLASS 2 MISDEMEANOR TRAFFIC OFFENSE;

15 (II) A CLASS A OR CLASS B TRAFFIC INFRACTION;

16 (III) A CONVICTION FOR A VIOLATION OF SECTION 42-4-1301 (1) OR
17 (2), C.R.S.;

18 (IV) A CONVICTION OF AN OFFENSE FOR WHICH THE FACTUAL
19 BASIS INVOLVED UNLAWFUL SEXUAL BEHAVIOR, AS DEFINED IN SECTION
20 16-22-102 (9), C.R.S.; OR

21 (V) A CONVICTION THAT IS SUBJECT TO SENTENCING UNDER ONE
22 OR MORE OF THE FOLLOWING PROVISIONS:

23 (A) SENTENCING FOR A CRIME INVOLVING EXTRAORDINARY
24 AGGRAVATING CIRCUMSTANCES, PURSUANT TO SECTION 18-1.3-401 (8),
25 C.R.S.;

26 (B) SENTENCING FOR A CRIME INVOLVING SENTENCE-ENHANCING
27 CIRCUMSTANCES, PURSUANT TO SECTION 18-1.3-401 (9), C.R.S.;

1 (C) SENTENCING FOR AN EXTRAORDINARY RISK CRIME, PURSUANT
2 TO SECTION 18-1.3-401 (10), C.R.S.;

3 (D) SENTENCING FOR A CRIME INVOLVING A PREGNANT VICTIM,
4 PURSUANT TO SECTION 18-1.3-401 (13), C.R.S.;

5 (E) SENTENCING FOR A CRIME PERTAINING TO A SPECIAL
6 OFFENDER, PURSUANT TO SECTION 18-18-407, C.R.S.;

7 (F) SENTENCING FOR A CRIMINAL CONVICTION FOR WHICH THE
8 UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE, AS DEFINED
9 IN SECTION 18-6-800.3, C.R.S.;

10 (G) SENTENCING FOR A CRIMINAL CONVICTION FOR A SEXUAL
11 OFFENSE, PURSUANT TO PART 4 OF ARTICLE 3 OF TITLE 18, C.R.S.

12 (b) COURT ORDERS SEALING RECORDS OF OFFICIAL ACTIONS
13 ENTERED PURSUANT TO THIS SECTION SHALL NOT LIMIT THE OPERATION OF
14 RULES OF DISCOVERY PROMULGATED BY THE SUPREME COURT OF
15 COLORADO.

16 (c) THIS SECTION SHALL NOT APPLY TO CONVICTION RECORDS IN
17 THE POSSESSION AND CUSTODY OF A CRIMINAL JUSTICE AGENCY WHEN AN
18 INQUIRY CONCERNING THE CONVICTION RECORDS IS MADE BY ANOTHER
19 CRIMINAL JUSTICE AGENCY.

20 (5) (a) **Applicability.** EXCEPT AS OTHERWISE PROVIDED IN
21 PARAGRAPH (b) OF THIS SUBSECTION (5), THE PROVISIONS OF THIS SECTION
22 SHALL APPLY TO CONVICTION RECORDS PERTAINING TO JUDGMENTS OF
23 CONVICTION ENTERED ON AND AFTER JULY 1, 2007.

24 (b) FOR ANY CONVICTION PRIOR TO JULY 1, 2007, FOR WHICH
25 THE DEFENDANT WOULD QUALIFY FOR RELIEF UNDER THIS SECTION, THE
26 DEFENDANT MAY OBTAIN AN ORDER FROM THE COURT TO SEAL
27 CONVICTION RECORDS IF:

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

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

7 (III) THE DEFENDANT PAYS AN INCREASED FILING FEE SET BY THE
8 STATE JUDICIAL DEPARTMENT TO COVER THE ACTUAL COSTS RELATED TO
9 THE FILING OF THE PETITION TO SEAL RECORDS.

10 (c) THE INCREASE IN FILING FEES COLLECTED UNDER
11 SUBPARAGRAPH (III) OF PARAGRAPH (b) OF THIS SUBSECTION (5) SHALL BE
12 TRANSMITTED TO THE STATE TREASURER FOR DEPOSIT IN THE JUDICIAL
13 STABILIZATION CASH FUND CREATED IN SECTION 13-32-101 (1.5), C.R.S.

14 **SECTION 3. Effective date.** This act shall take effect July 1,
15 2007.

16 **SECTION 4. Safety clause.** The general assembly hereby finds,
17 determines, and declares that this act is necessary for the immediate
18 preservation of the public peace, health, and safety.