

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

February 12, 2008

Date

Committee on Judiciary.

After consideration on the merits, the Committee recommends the following:

HB08-1082 be amended as follows, and as so amended, be referred to the Committee on Appropriations with favorable recommendation:

1 Amend printed bill, page 3, strike lines 16 and 17 and substitute the
2 following:

3 "DESCRIBED IN PARAGRAPH (a) OF THIS SUBSECTION (2), IF A DEFENDANT'S
4 CASE IS DISMISSED AFTER A PERIOD OF";

5 strike lines 24 through 27.

6 Page 4, strike lines 1 and 2;

7 line 18, strike "(5)" and substitute "(4)".

8 Page 5, strike line 14 and substitute the following:

9 "TO THE INVESTIGATION OR PROSECUTION OF ANY CASE, INCLUDING BUT
10 NOT LIMITED TO ANY SUBSEQUENT CASE THAT IS FILED AGAINST THE
11 DEFENDANT, OR FOR ANY OTHER";

12 line 15, after "DUTIES.", insert "IF A DEFENDANT IS CONVICTED OF A NEW
13 CRIMINAL OFFENSE AFTER AN ORDER SEALING CONVICTION RECORDS IS
14 ENTERED, THE COURT, ON ITS OWN MOTION OR UPON THE MOTION OF ANY
15 PROSECUTING ATTORNEY, SHALL ORDER THE CONVICTION RECORDS TO BE
16 UNSEALED."

1 Page 7, line 5, after "SEALED.", insert "IN MAKING THIS DETERMINATION,
2 THE COURT SHALL CONSIDER THE SEVERITY OF THE OFFENSE THAT IS THE
3 BASIS OF THE CONVICTION RECORDS SOUGHT TO BE SEALED, THE CRIMINAL
4 HISTORY OF THE DEFENDANT, AND THE NEED FOR THE GOVERNMENT
5 AGENCY TO RETAIN THE RECORDS.".

6 Page 8, line 8, strike "AN APPLICATION";

7 strike lines 9 and 10.

8 Page 9, after line 12, insert the following:

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

16 Page 10, strike lines 5 through 27.

17 Page 11, strike lines 1 through 22;

18 Renumber succeeding subsection accordingly.

19 Page 11, line 24, strike "(5)," and substitute "(4),";

20 line 26, strike "2008." and substitute "2008, FOR MISDEMEANOR OFFENSES,
21 PETTY OFFENSES, OFFENSES AGAINST MUNICIPAL ORDINANCES, CLASS 5
22 AND CLASS 6 FELONY OFFENSES INVOLVING CONTROLLED SUBSTANCES AS
23 DESCRIBED IN ARTICLE 18 OF TITLE 18, C.R.S., AND ANY OFFENSE THAT
24 WOULD BE CLASSIFIED AS A CLASS 5 OR CLASS 6 FELONY INVOLVING A
25 CONTROLLED SUBSTANCE AS DESCRIBED IN ARTICLE 18 OF TITLE 18,
26 C.R.S., IF THE OFFENSE WERE TO HAVE OCCURRED ON JULY 1, 2008.".

27 Page 12, line 17, strike "(5)" and substitute "(4)";

28 after line 19, insert the following:

29 "(d) THE PROVISIONS OF THIS SECTION SHALL NOT APPLY TO

1 CONVICTION RECORDS THAT ARE IN THE POSSESSION OF A CRIMINAL
2 JUSTICE AGENCY WHEN AN INQUIRY CONCERNING THE CONVICTION
3 RECORDS IS MADE BY ANOTHER CRIMINAL JUSTICE AGENCY.

4 (5) **Exceptions.** NOTWITHSTANDING THE PROVISIONS OF
5 SUBSECTION (4) OF THIS SECTION, THE PROVISIONS OF THIS SECTION SHALL
6 NOT APPLY TO RECORDS PERTAINING TO A CONVICTION FOR:

7 (a) ANY MISDEMEANOR OFFENSE DESCRIBED IN SECTION 10-3-104,
8 C.R.S.;

9 (b) ANY MISDEMEANOR OFFENSE DESCRIBED IN ARTICLE 14 OF
10 TITLE 12, C.R.S.;

11 (c) ANY MISDEMEANOR OFFENSE DESCRIBED IN PART 3 OF ARTICLE
12 3 OF TITLE 18, C.R.S.;

13 (d) ANY MISDEMEANOR OFFENSE DESCRIBED IN PART 4 OF ARTICLE
14 3 OF TITLE 18, C.R.S., OR ANY OFFENSE INVOLVING UNLAWFUL SEXUAL
15 BEHAVIOR, AS DEFINED IN SECTION 16-22-102 (9), C.R.S.;

16 (e) ANY MISDEMEANOR OFFENSE DESCRIBED IN PART 4 OF ARTICLE
17 6 OF TITLE 18, C.R.S.;

18 (f) A VIOLATION OF SECTION 18-6.5-103 (6), C.R.S.;

19 (g) ANY MISDEMEANOR OFFENSE DESCRIBED IN PART 1 OF ARTICLE
20 7 OF TITLE 18, C.R.S.;

21 (h) ANY MISDEMEANOR OFFENSE DESCRIBED IN SECTION 18-8-208,
22 C.R.S.;

23 (i) ANY MISDEMEANOR OFFENSE DESCRIBED IN PART 3, 4, OR 5 OF
24 ARTICLE 8 OF TITLE 18, C.R.S.;

25 (j) ANY MISDEMEANOR OFFENSE DESCRIBED IN PART 3 OF ARTICLE
26 5 OF TITLE 18, C.R.S.;

27 (k) ANY MISDEMEANOR OFFENSE DESCRIBED IN SECTION
28 18-12-102, 18-12-103, OR 18-12-104, C.R.S.;

1 (l) A CLASS 1 OR CLASS 2 MISDEMEANOR TRAFFIC OFFENSE
2 DESCRIBED IN TITLE 42, C.R.S.;

3 (m) A CLASS A OR CLASS B TRAFFIC INFRACTION DESCRIBED IN
4 TITLE 42, C.R.S.;

5 (n) A VIOLATION OF SECTION 42-4-1301 (1) OR (2), C.R.S.; OR

6 (o) ANY OFFENSE AGAINST A MUNICIPAL ORDINANCE, THE
7 ELEMENTS OF WHICH OFFENSE ARE INDISTINGUISHABLE FROM ANY
8 MISDEMEANOR OFFENSE OR OTHER OFFENSE THAT IS DESCRIBED BY A
9 PROVISION OF THIS SUBSECTION (5).

10 (6) **Rules of discovery and rules of evidence.** COURT ORDERS
11 SEALING RECORDS OF OFFICIAL ACTIONS PURSUANT TO THIS SECTION
12 SHALL NOT LIMIT THE OPERATIONS OF THE RULES OF DISCOVERY OR THE
13 RULES OF EVIDENCE PROMULGATED BY THE SUPREME COURT OF
14 COLORADO OR ANY OTHER STATE OR FEDERAL COURT."

** ** ** ** **