

HOUSE COMMITTEE OF REFERENCE REPORT

Chairman of Committee

April 30, 2013
Date

Committee on Judiciary.

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

SB13-123 be amended as follows, and as so amended, be referred to the Committee on Finance with favorable recommendation:

- 1 Amend reengrossed bill, page 7, strike lines 8 through 10 and substitute:
2 "(1) (a) (I), (1) (a) (III) introductory portion, (1) (b) (II) and (2) (b); and
3 **add** (4) as follows:
4 **24-72-308. Sealing of arrest and criminal records other than**
5 **convictions.** (1) (a) (I) Except as otherwise provided in subparagraphs
6 (II) and (III) of this paragraph (a), any person in interest may petition the
7 district court of the district in which any arrest and criminal records
8 information pertaining to said person in interest is located for the sealing
9 of all of said records, except basic identification information, if the
10 records are a record of official actions involving a criminal offense for
11 which said person in interest was not charged AND THE STATUTE OF
12 LIMITATIONS FOR THE OFFENSE FOR WHICH THE PERSON WAS ARRESTED
13 THAT HAS THE LONGEST STATUTE OF LIMITATIONS HAS RUN, in any case
14 which was completely dismissed, or in any case in which said person in
15 interest was acquitted.
16 (III) A person in interest may petition the district court of the
17 district in which any arrest and criminal records information pertaining
18 to said person in interest is located for the sealing of all of said records,
19 except basic identification information, if the records are a record of
20 official actions involving ~~a criminal offense that was not charged~~ or a
21 case that was dismissed due to a plea agreement in a separate case, and
22 if:
23 (b) (II) (A) Upon the filing of a petition, the court shall".
24 Page 10, line 9, before "TRAFFIC" add "MISDEMEANOR".

1 Page 10, line 14, before "TRAFFIC" add "MISDEMEANOR".

2 Page 11, line 15, before "TRAFFIC" add "MISDEMEANOR".

3 Page 30, after line 6 insert:

4 "SECTION 15. In Colorado Revised Statutes, 18-12-108, amend
5 (1), (3), and (6) (a); and add (6) (c) (III) as follows:

6 **18-12-108. Possession of weapons by previous offenders.** (1) A
7 person commits the crime of possession of a weapon by a previous
8 offender if the person knowingly possesses, uses, or carries upon his or
9 her person a firearm as described in section 18-1-901 (3) (h) or any other
10 weapon that is subject to the provisions of this article subsequent to the
11 person's conviction for a felony, or subsequent to the person's conviction
12 for attempt or conspiracy to commit a felony, under Colorado or any other
13 state's law or under federal law, UNLESS THE PERSON'S RIGHT TO POSSESS
14 A FIREARM OR ANY OTHER WEAPON HAS BEEN RESTORED AS PROVIDED IN
15 SECTION 18-12-108.1.

16 (3) A person commits the crime of possession of a weapon by a
17 previous offender if the person knowingly possesses, uses, or carries upon
18 his or her person a firearm as described in section 18-1-901 (3) (h) or any
19 other weapon that is subject to the provisions of this article subsequent to
20 the person's adjudication for an act which, if committed by an adult,
21 would constitute a felony, or subsequent to the person's adjudication for
22 attempt or conspiracy to commit a felony, under Colorado or any other
23 state's law or under federal law, UNLESS THE PERSON'S RIGHT TO POSSESS
24 A FIREARM OR ANY OTHER WEAPON HAS BEEN RESTORED AS PROVIDED IN
25 SECTION 18-12-108.1.

26 (6) (a) Upon the discharge of any inmate from the custody of the
27 department of corrections OR RELEASE FROM SUPERVISION FROM
28 PROBATION OR OTHER COMMUNITY SERVICE, the department shall provide
29 a written advisement to such inmate of the prohibited acts and penalties
30 specified in this section. The written advisement, at a minimum, shall
31 include the written statement specified in paragraph (c) of this subsection
32 (6).

33 (c) The written statement shall provide that:

34 (III) RESTORATION OF THE RIGHT TO POSSESS A FIREARM AS
35 DESCRIBED IN SECTION 18-1-901 (3) (h) OR OTHER WEAPON MAY BE
36 RESTORED BY COURT ORDER PURSUANT TO THE PROVISIONS OF SECTION
37 18-12-108.1 FOR CERTAIN NONVIOLENT OFFENSES AFTER A FIVE-YEAR
38 WAITING PERIOD IF THE RESTORATION IS FOR A LAWFUL PURPOSE OR

1 PURPOSES.

2 **SECTION 16.** In Colorado Revised Statutes, **add** 18-12-108.1 as
3 follows:

4 **18-12-108.1. Certificate of restoration of right to possess a**
5 **firearm or other weapon.** (1) (a) AFTER CONVICTION OF ANY FELONY
6 OFFENSE ENUMERATED IN SUBSECTION (2) OF THIS SECTION, A PERSON
7 MAY PETITION THE SENTENCING COURT, WITH NOTICE TO THE DISTRICT
8 ATTORNEY, FOR A CERTIFICATE OF RESTORATION OF HIS OR HER RIGHT TO
9 POSSESS A FIREARM AS DESCRIBED IN SECTION 18-1-901 (3) (h) OR OTHER
10 WEAPON IF AT LEAST FIVE YEARS HAVE PASSED SINCE THE COMPLETION OF
11 ANY SENTENCE, INCLUDING ANY PERIOD OF SUPERVISION. THE DISTRICT
12 ATTORNEY SHALL NOTIFY ANY VICTIM IF THE VICTIM RECEIVES
13 NOTIFICATION UNDER ARTICLE 4.1 OF TITLE 24, C.R.S., OR IN ANY OTHER
14 CASE AT THE DISCRETION OF THE DISTRICT ATTORNEY.

15 (b) THE COURT MAY DENY THE PETITION ON ITS FACE IF IT DOES
16 NOT MEET THE CRITERIA IN PARAGRAPH (c) OF THIS SUBSECTION (1).

17 (c) THE COURT MAY ISSUE A CERTIFICATE OF RESTORATION OF
18 RIGHTS TO POSSESS A FIREARM OR OTHER WEAPON IF, AFTER REVIEW OF
19 THE PETITION, THE CRIMINAL HISTORY OF THE PERSON AND ANY
20 SUBMISSION TO THE COURT BY THE DISTRICT ATTORNEY OR ANY VICTIM IN
21 THE CASE AND ANY OTHER RELEVANT EVIDENCE, THE COURT FINDS, BY A
22 PREPONDERANCE OF THE EVIDENCE, THAT:

23 (I) THE PERSON IS ENGAGED IN OR SEEKING TO BE ENGAGED IN A
24 LAWFUL OCCUPATION OR ACTIVITY, INCLUDING EMPLOYMENT, TRAINING,
25 EDUCATION, OR REHABILITATIVE PROGRAMS OR THE INDIVIDUAL HAS A
26 LAWFUL SOURCE OF INCOME;

27 (II) THE PERSON HAS NOT HAD ANY CRIMINAL CONVICTIONS SINCE
28 THE COMPLETION OF HIS OR HER SENTENCE, EXCLUDING MINOR TRAFFIC
29 VIOLATIONS, AND CRIMINAL CHARGES ARE NOT PENDING AGAINST THE
30 PERSON;

31 (III) THE PERSON HAS PRESENTED, IN THE PETITION, LAWFUL AND
32 SUBSTANTIAL REASONS FOR RESTORATION OF THE RIGHT TO POSSESS A
33 FIREARM OR OTHER WEAPON; AND

34 (IV) GRANTING THE PETITION WOULD NOT IMPOSE AN
35 UNREASONABLE RISK TO THE SAFETY OR WELFARE OF THE PUBLIC OR ANY
36 INDIVIDUAL.

37 (d) THE COURT, IN ITS DISCRETION AND AFTER REVIEW OF ALL
38 PLEADINGS FILED WITH THE COURT, MAY CONDUCT A HEARING TO
39 DETERMINE IF THE PETITIONER HAS ESTABLISHED BY A PREPONDERANCE
40 OF THE EVIDENCE THE FACTORS AS OUTLINED IN PARAGRAPH (b) OF THIS
41 SUBSECTION (1). IF THE COURT CONDUCTS A HEARING, THE COURT SHALL

1 PERMIT A VICTIM WHO RECEIVED NOTICE UNDER PARAGRAPH (a) OF THIS
2 SUBSECTION (1) AN OPPORTUNITY TO MAKE A STATEMENT AT THE
3 HEARING.

4 (2) A PERSON WHO HAS BEEN CONVICTED OF ONE OF THE
5 FOLLOWING FELONY OFFENSES SHALL BE ELIGIBLE TO PETITION FOR
6 RESTORATION OF THE RIGHT TO POSSESS A FIREARM AS DESCRIBED IN
7 SECTION 18-1-901 (3) (h) OR ANY OTHER WEAPON:

8 (a) AN PROPERTY CRIME OFFENSE IN ARTICLE 4 OF THIS TITLE,
9 EXCEPT FOR AN ARSON OFFENSE IN PART 1 OF ARTICLE 4 OF THIS TITLE; A
10 BURGLARY OFFENSE IN SECTIONS 18-4-202, 18-4- 202.1, 18-4-203, AND
11 18-4-205; AND A ROBBERY OFFENSE IN PART 3 OF ARTICLE 4 OF THIS TITLE;

12 (b) A FRAUD OFFENSE IN ARTICLE 5 OF THIS TITLE;

13 (c) A GOVERNMENTAL OPERATIONS OFFENSE IN ARTICLE 8 OF THIS
14 TITLE 18, EXCEPT FOR AN OFFENSE IN SECTION 18-8-206, 18-8-608, OR
15 18-8-615; AND AN OFFENSE IN PART 7 OF ARTICLE 8 OF THIS TITLE (VICTIM
16 AND WITNESS PROTECTION);

17 (d) AN OFFENSE IN ARTICLE 10 OF THIS TITLE (GAMBLING); ARTICLE
18 13 OF THIS TITLE (MISCELLANEOUS OFFENSES); ARTICLE 15 OF THIS TITLE
19 (MAKING, FINANCING, OR COLLECTION OF LOANS); ARTICLE 16 OF THIS
20 TITLE (PURCHASE OF VALUABLE ARTICLES); ARTICLE 18 OF THIS TITLE
21 (CONTROLLED SUBSTANCES), EXCEPT FOR AN OFFENSE IN SECTION
22 18-18-407; OR ARTICLE 20 OF THIS TITLE (LIMITED GAMING);

23 (e) AN OFFENSE IN VIOLATION OF TITLE 1 (ELECTIONS); TITLE 6
24 (CONSUMER AND COMMERCIAL AFFAIRS); TITLE 8 (LABOR AND INDUSTRY);
25 TITLE 9 (SAFETY - INDUSTRIAL AND COMMERCIAL); TITLE 11 (FINANCIAL
26 INSTITUTIONS); TITLE 12 (PROFESSIONS AND OCCUPATIONS), EXCEPT FOR
27 SECTION 12-29.5-108 (3), C.R.S.; TITLE 13 (COURTS AND COURT
28 PROCEDURE); TITLE 14 (DOMESTIC MATTERS); TITLE 15 (PROBATE, TRUSTS,
29 AND FIDUCIARIES); TITLE 22 (EDUCATION); TITLE 24
30 (GOVERNMENT-STATE); TITLE 25 (HEALTH); TITLE 26 (HUMAN SERVICES);
31 TITLE 28 (MILITARY AND VETERANS); TITLE 29 (GOVERNMENT - LOCAL);
32 TITLE 33 (PARKS AND WILDLIFE); TITLE 34 (MINERAL RESOURCES); TITLE
33 35 (AGRICULTURE); TITLE 36 (NATURAL RESOURCES - GENERAL); TITLE 37
34 (WATER AND IRRIGATION); TITLE 38 (PROPERTY); TITLE 39 (TAXATION);
35 TITLE 40 (UTILITIES); AND TITLE 42 (VEHICLES AND TRAFFIC), C.R.S.

36 (3) IF A PERSON IS CONVICTED OF A FELONY UNDER THE LAWS OF
37 ANOTHER STATE OR UNDER FEDERAL LAW AND THE PERSON HAS HAD HIS
38 OR HER RIGHT RESTORED TO POSSESS A FIREARM AS DESCRIBED IN SECTION
39 18-1-901 (3) (h) OR ANY OTHER WEAPON PURSUANT TO THE LAW OF THAT
40 JURISDICTION, THE PERSON SHALL NOT BE GUILTY OF AN OFFENSE
41 PURSUANT TO SECTION 18-12-108.

1 (4) IF THE COURT DENIES THE PETITION FOR RESTORATION OF
2 RIGHTS, THE PETITIONER SHALL NOT FILE A SUBSEQUENT PETITION UNTIL
3 AT LEAST ONE YEAR AFTER THE DENIAL OF THE PETITION.

4 **SECTION 17.** In Colorado Revised Statutes, 24-4.1-302.5,
5 **amend** (1) (d) (VI) and (1) (d) (VII); and **add** (1) (d) (VIII) as follows:

6 **24-4.1-302.5. Rights afforded to victims.** (1) In order to
7 preserve and protect a victim's rights to justice and due process, each
8 victim of a crime shall have the following rights:

9 (d) The right to be heard at any court proceeding:

10 (VI) At which the defendant requests a modification of the no
11 contact provision of the mandatory criminal protection order under
12 section 18-1-1001, C.R.S., or section 19-2-707, C.R.S.; or

13 (VII) Involving a subpoena for records concerning the victim's
14 medical history, mental health, education, or victim compensation, or any
15 other records that are privileged pursuant to section 13-90-107, C.R.S.;

16 OR

17 (VIII) AT WHICH THE DEFENDANT REQUESTS RESTORATION OF
18 FIREARM OWNERSHIP RIGHTS PURSUANT TO SECTION 18-12-108.1.

19 **SECTION 18.** In Colorado Revised Statutes, 24-4.1-303, **add**
20 (13.3) as follows:

21 **24-4.1-303. Procedures for ensuring rights of victims of**
22 **crimes.** (13.3) PURSUANT TO SECTION 18-12-108.1 (1), C.R.S., THE
23 DISTRICT ATTORNEY SHALL NOTIFY THE VICTIM THAT THE DEFENDANT HAS
24 PETITIONED THE COURT FOR A CERTIFICATE OF RESTORATION OF HIS OR
25 HER RIGHT TO POSSESS A FIREARM AS DESCRIBED IN SECTION 18-1-901 (3)
26 (h), C.R.S., OR ANY OTHER WEAPON."

27 Renumber succeeding sections accordingly.

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