

First Regular Session
Seventieth General Assembly
STATE OF COLORADO

INTRODUCED

LLS NO. 15-0522.01 Michael Dohr x4347

HOUSE BILL 15-1263

HOUSE SPONSORSHIP

Lebsock and Tate,

SENATE SPONSORSHIP

(None),

House Committees
Local Government

Senate Committees

A BILL FOR AN ACT

101 CONCERNING MATTERS RELATED TO SEALING PUBLIC RECORDS FOR
102 CERTAIN CRIMINAL OFFENSES, AND, IN CONNECTION
103 THEREWITH, PROHIBITING SEALING A SECOND OR SUBSEQUENT
104 MUNICIPAL COURT DOMESTIC VIOLENCE CONVICTION AND
105 ALLOWING SEALING FIRST-OFFENSE STATE COURT
106 MISDEMEANORS IF THE OFFENDER HAS NOT BEEN CONVICTED OF
107 ANOTHER OFFENSE FOR FIVE YEARS AND THE DISTRICT
108 ATTORNEY DOES NOT OBJECT.

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at

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.

[http://www.leg.state.co.us/bills/summaries.](http://www.leg.state.co.us/bills/summaries/))

Under current law, conviction records related to municipal offenses are eligible for record sealing. The bill prohibits sealing a second or subsequent municipal assault or battery conviction or any other municipal conviction if the conviction involves the underlying factual basis of domestic violence. The bill allows the prosecutor in a first-offense municipal assault or battery conviction or any other municipal conviction, if the conviction involves the underlying factual basis of domestic violence, to veto the sealing request.

The bill allows a person who is a first-time offender convicted of a misdemeanor to petition the court to seal his or her criminal history public record for the conviction. A person must wait at least 5 years after completing the sentence to petition for sealing of the conviction. The bill makes certain offenses ineligible for sealing. In order to have the record sealed, the defendant must show the court that he or she has not been convicted of another offense or been charged with another offense since the discharge of the offense for which the defendant is seeking to have sealed, has not previously completed an adult diversion program, deferred prosecution, or deferred sentence, and is not subject to a civil or criminal protection order. The district attorney has the right to veto the request. A defendant who successfully petitions a court for the sealing of conviction records must provide the Colorado bureau of investigation (bureau) and each custodian of the conviction records with a copy of the court's order to seal the conviction records and pay to the bureau any costs related to the sealing of the conviction records in the custody of the bureau.

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

2 **SECTION 1.** In Colorado Revised Statutes, 24-72-708, **amend**
3 (1) (a) (III) and (2) (b) as follows:

4 **24-72-708. Sealing of criminal conviction records information**
5 **for petty offenses and municipal offenses for convictions.** (1) **Sealing**
6 **of conviction records.** (a) A defendant may petition the district court of
7 the district in which any conviction records pertaining to the defendant
8 for a petty offense or municipal violation are located for the sealing of the
9 conviction records, except basic identifying information, if:

10 (III) (A) The conviction records to be sealed are not for a

1 misdemeanor traffic offense committed either by a holder of a
2 commercial learner's permit or a commercial driver's license, as defined
3 in section 42-2-402, C.R.S., or by the operator of a commercial motor
4 vehicle, as defined in section 42-2-402, C.R.S.; OR

5 (B) NOTWITHSTANDING ANY OTHER PROVISION IN THIS SECTION,
6 THE CONVICTION RECORDS TO BE SEALED ARE NOT FOR A SECOND OR
7 SUBSEQUENT MUNICIPAL ASSAULT OR BATTERY OFFENSE IN WHICH THE
8 UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE, AS DEFINED
9 IN SECTION 18-6-800.3 (1), C.R.S., OR ANY OTHER SECOND OR
10 SUBSEQUENT MUNICIPAL OFFENSE IN WHICH THE UNDERLYING FACTUAL
11 BASIS INVOLVES DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3
12 (1), C.R.S.

13 (2) (b) If the court determines that the petition is sufficient on its
14 face and that no other grounds exist at that time for the court to deny the
15 petition under this section, the court shall set a date for a hearing, and the
16 defendant shall notify by certified mail the prosecuting attorney, the
17 arresting agency, and any other person or agency identified by the
18 defendant. IF THE PETITION IS FOR SEALING A FIRST-OFFENSE MUNICIPAL
19 ASSAULT OR BATTERY OFFENSE IN WHICH THE UNDERLYING FACTUAL
20 BASIS INVOLVES DOMESTIC VIOLENCE, AS DEFINED IN SECTION 18-6-800.3
21 (1), C.R.S., OR ANY OTHER FIRST-OFFENSE MUNICIPAL OFFENSE IN WHICH
22 THE UNDERLYING FACTUAL BASIS INVOLVES DOMESTIC VIOLENCE, AS
23 DEFINED IN SECTION 18-6-800.3 (1), C.R.S., AND THE PROSECUTING
24 ATTORNEY DOES NOT OBJECT TO THE SEALING, THE COURT SHALL SET THE
25 MATTER FOR HEARING. IF THE DISTRICT ATTORNEY OBJECTS, THE COURT
26 SHALL DISMISS THE PETITION.

27 **SECTION 2.** In Colorado Revised Statutes, **add** 24-72-710 as

1 follows:

2 **24-72-710. Sealing of criminal conviction records information**
3 **for misdemeanor offenses. (1) Sealing of conviction records. (a) A**

4 DEFENDANT MAY PETITION THE DISTRICT COURT OF THE DISTRICT IN
5 WHICH ANY CONVICTION RECORDS PERTAINING TO THE DEFENDANT FOR A
6 MISDEMEANOR OFFENSE ARE LOCATED FOR THE SEALING OF THE
7 CONVICTION RECORD, EXCEPT BASIC IDENTIFYING INFORMATION, IF:

8 (I) THE PETITION IS FILED FIVE OR MORE YEARS AFTER THE DATE
9 OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST THE
10 DEFENDANT OR THE RELEASE OF THE DEFENDANT FROM JURISDICTION
11 CONCERNING A CRIMINAL CONVICTION, WHICHEVER IS LATER;

12 (II) THE DEFENDANT HAS NOT BEEN CHARGED OR CONVICTED FOR
13 A FELONY, MISDEMEANOR, OR MISDEMEANOR TRAFFIC OFFENSE SINCE THE
14 DATE OF THE FINAL DISPOSITION OF ALL CRIMINAL PROCEEDINGS AGAINST
15 HIM OR HER OR THE DATE OF THE DEFENDANT'S RELEASE FROM
16 SUPERVISION, WHICHEVER IS LATER;

17 (III) THE DEFENDANT HAS NOT PREVIOUSLY COMPLETED A
18 DIVERSION PROGRAM, DEFERRED PROSECUTION, OR DEFERRED SENTENCE;

19 (IV) THE DEFENDANT HAS NOT BEEN CONVICTED OF ANY OTHER
20 OFFENSE EXCEPT A TRAFFIC OFFENSE PRIOR TO THE OFFENSE THAT HE OR
21 SHE PETITIONS TO BE SEALED;

22 (V) THE CONVICTION RECORDS TO BE SEALED ARE NOT FOR:

23 (A) A MISDEMEANOR TRAFFIC OFFENSE;

24 (B) AN OFFENSE DESCRIBED IN TITLE 33, C.R.S.;

25 (C) AN UNLAWFUL SEXUAL BEHAVIOR OFFENSE AS DEFINED BY
26 SECTION 16-22-102 (9), C.R.S.;

27 (D) A CRIME AGAINST AN AT-RISK ADULT OR AT-RISK JUVENILE AS

1 DESCRIBED IN SECTION 18-6.5-103, C.R.S.;

2 (E) AN OFFENSE DESCRIBED IN PART 2 OF ARTICLE 9 OF TITLE 18,
3 C.R.S.; OR

4 (F) AN OFFENSE DESCRIBED IN SECTION 18-6-401, C.R.S.; AND

5 (VI) THE DEFENDANT AT THE TIME OF FILING THE PETITION OR AT
6 ANY POINT BEFORE THE COURT RULES ON THE PETITION IS NOT SUBJECT TO
7 A CRIMINAL OR CIVIL PROTECTION ORDER.

8 (b) UPON FILING THE PETITION, THE DEFENDANT SHALL PAY THE
9 FILING FEE REQUIRED BY LAW AND AN ADDITIONAL FILING FEE OF TWO
10 HUNDRED DOLLARS TO COVER THE ACTUAL COSTS RELATED TO THE FILING
11 OF THE PETITION TO SEAL RECORDS. THE ADDITIONAL FILING FEES
12 COLLECTED UNDER THIS PARAGRAPH (b) MUST BE TRANSMITTED TO THE
13 STATE TREASURER FOR DEPOSIT IN THE JUDICIAL STABILIZATION CASH
14 FUND CREATED IN SECTION 13-32-101 (6), C.R.S.

15 (2) (a) UPON THE FILING OF A PETITION, THE COURT SHALL REVIEW
16 THE PETITION AND DETERMINE WHETHER THERE ARE GROUNDS UNDER
17 THIS SECTION TO PROCEED TO A HEARING ON THE PETITION. IF THE COURT
18 DETERMINES THAT THE PETITION ON ITS FACE IS INSUFFICIENT OR IF THE
19 COURT DETERMINES THAT, AFTER TAKING JUDICIAL NOTICE OF MATTERS
20 OUTSIDE THE PETITION, THE DEFENDANT IS NOT ENTITLED TO RELIEF
21 UNDER THIS SECTION, THE COURT SHALL ENTER AN ORDER DENYING THE
22 PETITION AND SPECIFYING THE REASONS FOR THE DENIAL AND MAIL A
23 COPY OF THE ORDER TO THE DEFENDANT.

24 (b) IF THE COURT DETERMINES THAT THE PETITION IS SUFFICIENT
25 ON ITS FACE AND THAT NO OTHER GROUNDS EXIST AT THAT TIME FOR THE
26 COURT TO DENY THE PETITION UNDER THIS SECTION, THE COURT SHALL
27 REQUIRE THE DEFENDANT TO NOTIFY BY CERTIFIED MAIL THE

1 PROSECUTING ATTORNEY, THE ARRESTING AGENCY, AND ANY OTHER
2 PERSON OR AGENCY IDENTIFIED BY THE DEFENDANT. IF THE PROSECUTING
3 ATTORNEY DOES NOT OBJECT TO THE SEALING, THE COURT SHALL SET THE
4 MATTER FOR HEARING. IF THE DISTRICT ATTORNEY OBJECTS, THE COURT
5 SHALL DISMISS THE PETITION.

6 (3) (a) AFTER THE HEARING DESCRIBED IN SUBSECTION (2) OF THIS
7 SECTION IS CONDUCTED AND IF THE COURT FINDS THAT THE HARM TO THE
8 PRIVACY OF THE DEFENDANT OR THE DANGERS OF UNWARRANTED,
9 ADVERSE CONSEQUENCES TO THE DEFENDANT OUTWEIGH THE PUBLIC
10 INTEREST IN RETAINING THE CONVICTION RECORDS, THE COURT MAY
11 ORDER THE CONVICTION RECORDS, EXCEPT BASIC IDENTIFYING
12 INFORMATION, TO BE SEALED. IN MAKING THIS DETERMINATION, THE
13 COURT SHALL, AT A MINIMUM, CONSIDER THE FACTORS IN SECTION
14 24-72-704 (1) (c). AN ORDER ENTERED PURSUANT TO THIS SUBSECTION (3)
15 MUST BE DIRECTED TO EACH CUSTODIAN WHO MAY HAVE CUSTODY OF ANY
16 PART OF THE CONVICTION RECORDS THAT ARE THE SUBJECT OF THE ORDER.

17 (b) WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION
18 RECORDS PURSUANT TO THIS SUBSECTION (3), THE DEFENDANT SHALL
19 PROVIDE THE COLORADO BUREAU OF INVESTIGATION AND EACH
20 CUSTODIAN OF THE CONVICTION RECORDS WITH A COPY OF THE ORDER.
21 THE PETITIONER SHALL PROVIDE A PRIVATE CUSTODIAN WITH A COPY OF
22 THE ORDER AND SEND THE PRIVATE CUSTODIAN AN ELECTRONIC
23 NOTIFICATION OF THE ORDER. EACH PRIVATE CUSTODIAN THAT RECEIVES
24 A COPY OF THE ORDER FROM THE PETITIONER SHALL REMOVE THE
25 RECORDS THAT ARE SUBJECT TO AN ORDER FROM ITS DATABASE. THE
26 DEFENDANT SHALL PAY TO THE BUREAU ANY COSTS RELATED TO THE
27 SEALING OF HIS OR HER CRIMINAL CONVICTION RECORDS IN THE CUSTODY

1 OF THE BUREAU.

2 (c) AFTER COPIES OF THE ORDER ARE PROVIDED TO EACH
3 CUSTODIAN, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT
4 AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS
5 WERE SEALED.

6 (4) THE PROVISIONS OF THIS SECTION DO NOT APPLY TO
7 CONVICTION RECORDS THAT ARE IN THE POSSESSION OF A CRIMINAL
8 JUSTICE AGENCY WHEN AN INQUIRY CONCERNING THE CONVICTION
9 RECORDS IS MADE BY ANOTHER CRIMINAL JUSTICE AGENCY.

10 (5) A VICTIM OF ANY CRIME IN WHICH THE RECORD IS SEALED
11 PURSUANT TO THIS SECTION SHALL HAVE ACCESS TO THE SEALED RECORD.

12 **SECTION 3. Safety clause.** The general assembly hereby finds,
13 determines, and declares that this act is necessary for the immediate
14 preservation of the public peace, health, and safety.