

CHAPTER 342

CRIMINAL LAW AND PROCEDURE

HOUSE BILL 16-1265

BY REPRESENTATIVE(S) Melton and Esgar, Salazar, Becker K., Brown, Conti, Court, Duran, Fields, Garnett, Ginal, Hamner, Kagan, Klingenschmitt, Kraft-Tharp, Lebsack, Lee, Lontine, McCann, Mitsch Bush, Moreno, Pettersen, Priola, Rosenthal, Ryden, Saine, Vigil, Young, Hullinghorst;

also SENATOR(S) Johnston and Cooke, Aguilar, Baumgardner, Carroll, Donovan, Garcia, Grantham, Guzman, Heath, Hill, Hodge, Jahn, Jones, Kefalas, Kerr, Lambert, Lundberg, Marble, Martinez Humenik, Merrifield, Neville T., Newell, Roberts, Scheffel, Scott, Steadman, Tate, Todd, Ulibarri, Woods, Cadman.

AN ACT**CONCERNING EXPUNGEMENT OF ARREST RECORDS BASED ON MISTAKEN IDENTITY.**

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

SECTION 1. In Colorado Revised Statutes, **add** 24-72-701.5 as follows:

24-72-701.5. Expungement of arrest record in case of mistaken identity - definitions. (1) (a) ~~NOTWITHSTANDING ANY OTHER PROVISION OF LAW, A COURT SHALL EXPUNGE THE ARREST AND CRIMINAL RECORDS INFORMATION OF A PERSON WHO WAS ARRESTED AS A RESULT OF MISTAKEN IDENTITY AND WHO DID NOT HAVE CHARGES FILED AGAINST HIM OR HER.~~

(b) ~~NO LATER THAN NINETY DAYS AFTER AN INVESTIGATION BY A LAW ENFORCEMENT AGENCY FINDS THAT A PERSON WAS ARRESTED AS A RESULT OF MISTAKEN IDENTITY AND NO CHARGES WERE FILED, THE LAW ENFORCEMENT AGENCY THAT MADE THE ARREST SHALL PETITION THE DISTRICT COURT IN THE JUDICIAL DISTRICT WHERE THE PERSON WAS ARRESTED FOR AN EXPUNGEMENT ORDER FOR THE ARREST AND CRIMINAL RECORDS INFORMATION MADE AS A RESULT OF THE MISTAKEN IDENTITY, AT NO COST TO THE PERSON ARRESTED. A PETITION FILED PURSUANT TO THIS PARAGRAPH (b) SHALL NOT BE SUBJECT TO A FILING FEE.~~

(c) ~~NO LATER THAN NINETY DAYS AFTER RECEIVING THE PETITION, THE COURT SHALL ORDER THE EXPUNGEMENT OF THE ARREST AND CRIMINAL RECORDS INFORMATION AND ALL OTHER ADMINISTRATIVE RECORDS OF THE LAW ENFORCEMENT AGENCY RELATING TO THE PERSON'S ARREST AS A RESULT OF~~

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

MISTAKEN IDENTITY.

(2) ANY ORDER ENTERED PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION MUST BE DIRECTED TO EVERY CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART OF THE ARREST AND CRIMINAL RECORDS INFORMATION THAT IS THE SUBJECT OF THE ORDER. WHEN A COURT ENTERS AN ORDER EXPUNGING CRIMINAL RECORDS PURSUANT TO PARAGRAPH (c) OF SUBSECTION (1) OF THIS SECTION, THE PETITIONER SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION AND EVERY CUSTODIAN OF SUCH RECORDS WITH A COPY OF THE ORDER. 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 THE ORDER FROM ITS DATABASE. THEREAFTER, THE COURT MAY ISSUE AN ORDER SEALING THE CIVIL CASE IN WHICH THE RECORDS WERE SEALED.

(3) UPON THE ENTRY OF AN ORDER TO EXPUNGE THE RECORDS, THE PETITIONER AND ALL CRIMINAL JUSTICE AGENCIES MAY PROPERLY REPLY, UPON ANY INQUIRY INTO THE MATTER, THAT NO SUCH RECORDS EXIST WITH RESPECT TO THE PERSON.

(4) EMPLOYERS, EDUCATIONAL INSTITUTIONS, STATE AND LOCAL GOVERNMENT AGENCIES, OFFICIALS, AND EMPLOYEES SHALL NOT, IN ANY APPLICATION OR INTERVIEW OR IN ANY OTHER WAY, REQUIRE AN APPLICANT TO DISCLOSE ANY INFORMATION CONTAINED IN EXPUNGED RECORDS. AN APPLICANT NEED NOT, IN ANSWER TO ANY QUESTION CONCERNING ARREST AND CRIMINAL RECORDS INFORMATION THAT HAS BEEN EXPUNGED, INCLUDE A REFERENCE TO OR INFORMATION CONCERNING THE EXPUNGED INFORMATION AND MAY STATE THAT NO SUCH ACTION HAS EVER OCCURRED. SUCH AN APPLICATION MAY NOT BE DENIED SOLELY BECAUSE OF THE APPLICANT'S REFUSAL TO DISCLOSE ARREST AND CRIMINAL RECORDS INFORMATION THAT HAS BEEN EXPUNGED.

(5) FOR PURPOSES OF THIS SECTION:

(a) "LAW ENFORCEMENT AGENCY" MEANS THE COLORADO STATE PATROL OR THE AGENCY OF A STATE OR LOCAL GOVERNMENT AUTHORIZED TO ENFORCE THE LAWS OF COLORADO.

(b) "MISTAKEN IDENTITY" MEANS THE MISIDENTIFICATION BY A WITNESS OR LAW ENFORCEMENT, CONFUSION ON THE PART OF A WITNESS OR LAW ENFORCEMENT AS TO THE IDENTITY OF THE PERSON WHO COMMITTED THE CRIME, MISINFORMATION PROVIDED TO LAW ENFORCEMENT AS TO THE IDENTITY OF THE PERSON WHO COMMITTED THE CRIME, OR SOME OTHER MISTAKE ON THE PART OF A WITNESS OR LAW ENFORCEMENT AS TO THE IDENTITY OF THE PERSON WHO COMMITTED THE CRIME.

SECTION 2. Safety clause. The general assembly hereby finds, determines, and declares that this act is necessary for the immediate preservation of the public peace, health, and safety.

Approved: June 10, 2016