

CHAPTER 135

COURTS

HOUSE BILL 18-1078

BY REPRESENTATIVE(S) Landgraf and Exum, Becker K., Bridges, Buckner, Carver, Coleman, Esgar, Ginal, Gray, Hamner, Hansen, Herod, Hooton, Humphrey, Jackson, Kennedy, Kraft-Tharp, Lee, Lontine, McLachlan, Melton, Michaelson Jenet, Pettersen, Roberts, Rosenthal, Salazar, Singer, Weissman, Williams D., Winter, Young, Duran, Danielson, Foote, Pabon, Rankin, Sandridge, Valdez;

also SENATOR(S) Gardner, Aguilar, Crowder, Donovan, Garcia, Jones, Kagan, Kefalas, Lambert, Martinez Humenik, Moreno, Priola, Scott, Tate, Todd, Williams A., Grantham.

AN ACT**CONCERNING COURT PROGRAMS FOR DEFENDANTS WHO HAVE SERVED IN THE ARMED FORCES.**

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

SECTION 1. In Colorado Revised Statutes, **add** 16-7-207.5 as follows:

16-7-207.5. Court's duty to inform defendants with current or prior military service on first appearance in court and on pleas of guilty. (1) AT THE FIRST APPEARANCE OF A DEFENDANT IN COURT OR UPON ARRAIGNMENT, WHICHEVER IS FIRST IN TIME, THE COURT SHALL ASCERTAIN WHETHER THE DEFENDANT IS SERVING IN THE UNITED STATES ARMED FORCES OR IS A VETERAN OF SUCH FORCES. THE COURT SHALL INFORM ANY SUCH DEFENDANT THAT HE OR SHE MAY BE ENTITLED TO RECEIVE MENTAL HEALTH TREATMENT, SUBSTANCE USE DISORDER TREATMENT, OR OTHER SERVICES AS A VETERAN.

(2) THE COURT SHALL NOT ACCEPT A PLEA OF GUILTY OR NOLO CONTENDERE WITHOUT FIRST DETERMINING WHETHER THE DEFENDANT IS SERVING IN THE UNITED STATES ARMED FORCES OR IS A VETERAN OF SUCH FORCES AND, IF SO, INFORMING THE DEFENDANT AS DESCRIBED IN SUBSECTION (1) OF THIS SECTION.

(3) THIS SECTION APPLIES TO, BUT IS NOT LIMITED TO, PROSECUTIONS FOR VIOLATIONS OF MUNICIPAL CHARTERS AND PROSECUTIONS FOR VIOLATIONS OF MUNICIPAL ORDINANCES, EXCEPT FOR TRAFFIC INFRACTIONS FOR WHICH THE PENALTY IS ONLY A FINE AND ARREST IS PROHIBITED.

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

SECTION 2. In Colorado Revised Statutes, **amend** 13-5-144 as follows:

13-5-144. Chief judge - veterans treatment court authority. The chief judge of a judicial district may establish an appropriate program for the treatment of veterans and members of the military. IN ESTABLISHING ANY SUCH PROGRAM, THE CHIEF JUDGE, IN COLLABORATION WITH THE PROBATION DEPARTMENT, THE DISTRICT ATTORNEY, AND THE STATE PUBLIC DEFENDER, SHALL ESTABLISH PROGRAM GUIDELINES AND ELIGIBILITY CRITERIA.

SECTION 3. In Colorado Revised Statutes, 24-72-702, **add** (1)(b)(II)(C) as follows:

24-72-702. Sealing of arrest and criminal records other than convictions. (1) (b) (II) (C) IF THE PERSON IN INTEREST HAS SUCCESSFULLY COMPLETED A VETERANS TREATMENT PROGRAM ESTABLISHED PURSUANT TO SECTION 13-5-144 IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL, THE COURT SHALL CONSIDER SUCH FACTOR FAVORABLY IN DETERMINING WHETHER TO ISSUE AN ORDER TO SEAL RECORDS PURSUANT TO THIS SECTION.

SECTION 4. In Colorado Revised Statutes, 24-72-704, **amend** (1)(c) as follows:

24-72-704. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2008, and prior to July 1, 2011. (1) **Sealing of conviction records.** (c) After the hearing described in ~~subparagraph (II) of paragraph (b) of this subsection (1)~~ SUBSECTION (1)(b)(II) OF THIS SECTION IS CONDUCTED AND IF THE COURT FINDS THAT THE HARM TO THE PRIVACY OF THE DEFENDANT OR THE DANGERS OF UNWARRANTED, ADVERSE CONSEQUENCES TO THE DEFENDANT OUTWEIGH THE PUBLIC INTEREST IN RETAINING THE CONVICTION RECORDS, THE COURT MAY ORDER THE CONVICTION RECORDS, EXCEPT BASIC IDENTIFICATION INFORMATION, TO BE SEALED. IN MAKING THIS DETERMINATION, THE COURT SHALL, AT A MINIMUM, CONSIDER THE SEVERITY OF THE OFFENSE THAT IS THE BASIS OF THE CONVICTION RECORDS SOUGHT TO BE SEALED, THE CRIMINAL HISTORY OF THE DEFENDANT, THE NUMBER OF CONVICTIONS AND DATES OF THE CONVICTIONS FOR WHICH THE DEFENDANT IS SEEKING TO HAVE THE RECORDS SEALED, AND THE NEED FOR THE GOVERNMENT AGENCY TO RETAIN THE RECORDS. IF THE PERSON IN INTEREST HAS SUCCESSFULLY COMPLETED A VETERANS TREATMENT PROGRAM ESTABLISHED PURSUANT TO SECTION 13-5-144 IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL, THE COURT SHALL CONSIDER SUCH FACTOR FAVORABLY IN DETERMINING WHETHER TO ISSUE AN ORDER TO SEAL RECORDS PURSUANT TO THIS SECTION. ~~THE COURT SHALL DIRECT AN ORDER ENTERED PURSUANT TO THIS PARAGRAPH (c) SHALL BE DIRECTED~~ SUBSECTION (1)(c) TO EACH CUSTODIAN WHO MAY HAVE CUSTODY OF ANY PART OF THE CONVICTION RECORDS THAT ARE THE SUBJECT OF THE ORDER. WHENEVER A COURT ENTERS AN ORDER SEALING CONVICTION RECORDS PURSUANT TO THIS ~~paragraph (c)~~ SUBSECTION (1)(c), THE DEFENDANT SHALL PROVIDE THE COLORADO BUREAU OF INVESTIGATION AND EACH CUSTODIAN OF THE CONVICTION 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 AN ORDER FROM ITS DATABASE. THE DEFENDANT SHALL PAY TO THE BUREAU ANY COSTS RELATED TO THE SEALING OF HIS OR HER CRIMINAL CONVICTION RECORDS IN THE CUSTODY OF THE BUREAU. THEREAFTER, THE DEFENDANT MAY REQUEST AND THE COURT MAY GRANT AN ORDER SEALING THE CIVIL CASE IN WHICH THE CONVICTION RECORDS WERE

sealed.

SECTION 5. In Colorado Revised Statutes, 24-72-705, **add** (1)(d)(V) and (1)(e)(V) as follows:

24-72-705. Sealing of criminal conviction records information for offenses involving controlled substances for convictions entered on or after July 1, 2011.

(1) **Sealing of conviction records.** (d) (V) IF THE PERSON IN INTEREST HAS SUCCESSFULLY COMPLETED A VETERANS TREATMENT PROGRAM ESTABLISHED PURSUANT TO SECTION 13-5-144 IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL, THE COURT SHALL CONSIDER SUCH FACTOR FAVORABLY IN DETERMINING WHETHER TO ISSUE AN ORDER TO SEAL RECORDS PURSUANT TO SUBSECTIONS (1)(d)(II) TO (1)(d)(IV) OF THIS SECTION.

(e) (V) IF THE PERSON IN INTEREST HAS SUCCESSFULLY COMPLETED A VETERANS TREATMENT PROGRAM ESTABLISHED PURSUANT TO SECTION 13-5-144 IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL, THE COURT SHALL CONSIDER SUCH FACTOR FAVORABLY IN DETERMINING WHETHER TO ISSUE AN ORDER TO SEAL RECORDS PURSUANT TO SUBSECTIONS (1)(e)(II) TO (1)(e)(IV) OF THIS SECTION.

SECTION 6. In Colorado Revised Statutes, 24-72-708, **add** (2)(c) as follows:

24-72-708. Sealing of criminal conviction records information for petty offenses and municipal offenses for convictions. (2) (c) IF THE PERSON IN

INTEREST HAS SUCCESSFULLY COMPLETED A VETERANS TREATMENT PROGRAM ESTABLISHED PURSUANT TO SECTION 13-5-144 IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL, THE COURT SHALL CONSIDER SUCH FACTOR FAVORABLY IN DETERMINING WHETHER TO ISSUE AN ORDER TO SEAL RECORDS PURSUANT TO THIS SECTION.

SECTION 7. In Colorado Revised Statutes, 24-72-709, **add** (2.5) as follows:

24-72-709. Sealing of criminal conviction records information for posting an intimate photograph of a person on the internet. (2.5) IF THE PERSON IN

INTEREST HAS SUCCESSFULLY COMPLETED A VETERANS TREATMENT PROGRAM ESTABLISHED PURSUANT TO SECTION 13-5-144 IN THE CASE THAT IS THE SUBJECT OF THE PETITION TO SEAL, THE COURT SHALL CONSIDER SUCH FACTOR FAVORABLY IN DETERMINING WHETHER TO ISSUE AN ORDER TO SEAL RECORDS PURSUANT TO THIS SECTION.

SECTION 8. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 8, 2018, if adjournment sine die is on May 9, 2018); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Approved: April 12, 2018