

HB19-1275 Increased Eligibility for Sealing of Criminal Records

This bill underwent a great deal of changes, and we worked on it throughout the session to get it across the finish line on the very last day. The final version of the bill both **vastly expands the cases that are eligible to seal** and **explicitly prohibits prosecutors from requiring any defendant to waive his/her future right to seal as a condition of getting a plea agreement**. The bill also:

- a. **requires the sealing of records** in any case where the defendant was arrested because of **mistaken identity** and not charged;
- b. **requires the unsealing of conviction records** where the defendant is **subsequently convicted** of another crime;
- c. **requires** the court to provide a **written advisement** to a defendant re: rights to seal records of convictions described in 24-72-706 to 708 **at sentencing**, and **requires that Probation and Parole** give the same **written advisement upon termination of supervision**;
- d. **excludes the ability to seal** on any case where the defendant was convicted of **more than one offense** and at least **one of those convictions is ineligible** to be sealed;
- e. makes records of cases that were **dismissed or not charged as a result of a plea agreement eligible for sealing** at the time that the records in the case of conviction are eligible for sealing;
- f. **prohibits records of convictions from being eligible for sealing** if the defendant still **owes restitution, fines, court costs, or other fees**, unless the court order for those amounts have been vacated;
- g. **excludes from eligibility for sealing** cases in which the only charges were **Class A or B traffic infractions, Class 1 or 2 Misdemeanor Traffic Offenses, DJ's** where the defendant held a **CDL** or was operating a **commercial vehicle**, and **DJ's** where the guilty plea was **to felony unlawful sexual behavior** as defined in 16-22-102(9);
- h. **leaves in place existing eligibility to seal** records where the defendant:
 - i. successfully completed diversion and no charges were filed,
 - ii. charges were not filed and the SOL has run,
 - iii. charges were not filed and the defendant is no longer being investigated by law enforcement;
- i. **requires the court to seal** records where:

- i. the case is completely dismissed (not resulting from a plea bargain),
- ii. the defendant is acquitted of all charges,
- iii. the defendant successfully completes a diversion agreement,
- iv. the defendant successfully completes a DJ and all counts are dismissed;

j. **allows sealing of *convictions*** as follows:

- i. **petty offenses/drug petty offenses**, the motion may be filed **1 year** from the later of final disposition of the criminal proceedings or the release of the defendant from supervision concerning the conviction,
- ii. **M3, M2, any drug misdo**, the motion may be filed **2 years** from the later of final disposition of the criminal proceedings or the release of the defendant from supervision concerning the conviction,
- iii. **M1, F6, F5, F4, any DF4 or DF3**, the motion may be filed **3 years** from the later of final disposition of the criminal proceedings or the release of the defendant from supervision concerning the conviction,
- iv. **all other offenses**, the motion may be filed **5 years** from the later of final disposition of the criminal proceedings or the release of the defendant from supervision concerning the conviction;

k. **excludes from eligibility to seal the following convictions:**

- i. **Class A or B Traffic Infractions**,
- ii. **Class 1 or 2 Misdemeanor Traffic Offenses**,
- iii. any **DUI** (convictions under 42-4-1301(1) or (2)),
- iv. underlying factual basis of **unlawful sexual behavior** as defined in 16-22-102(9),
- v. any **child abuse** as defined under 18-6-401,
- vi. **a conviction subject to sentencing for:** extraordinary aggravating circumstances under 18-1.3-401(8), extraordinary risk crime under 18-1.3-401(10), a crime involving a pregnant victim under 18-1.3-401(13), special offender under 18-18-407, DV as defined under 18-6-800.3, sexual offenses, COV as defined under 18-1.3-406, felony conviction under 24-4.1-302(1) or 18-9-202, sentencing for F1, F2, F3, or DF1, abortion under 18-6-101 et. seq., sentencing for ID Theft under 18-5-902(1), sentencing for unlawful termination of pregnancy offenses under 18-3.5-103(4), (5), (6), (7), (8), or (9), sentencing for pandering under 18-7-203;

l. **allows sealing of any misdemeanor conviction ineligible as stated above if:**

- i. the **DA consents** to the sealing, or
- ii. the **court finds** by clear and convincing evidence that the **need for sealing is significant and substantial** and the petitioner is **no longer a threat to public safety** and the **public disclosure of the record is no longer necessary to protect/inform the public**;
- m. creates a separate standard for sealing convictions for **victims of human trafficking**;
- n. allows for **sealing of municipal convictions at least 3 years after** the later of final disposition of all criminal proceedings or the defendant's release from supervision related to the conviction;
- o. makes any hearing held on a petition/motion filed for sealing of records a **critical stage under VRA** and **requires the DA to notify the victim** at the filing.

This bill is complex and imperfect, but it is a huge victory for our clients and will change the face of sealing across the state. Please **keep the increased eligibility in mind when advising clients** and **make sure courts are giving written advisements at sentencing** as required.