

ASSEMBLY BILL NO. 156—ASSEMBLYMAN OHRENSCHALL

FEBRUARY 20, 2013

JOINT SPONSOR: SENATOR SEGERBLOM

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the sealing of certain records. (BDR 14-590)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

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EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to records; revising provisions governing the sealing of certain records; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

- 1 Existing law authorizes a person to petition the court in which the person was
2 convicted for the sealing of all records relating to certain convictions.
3 (NRS 179.245) **Section 1** of this bill prohibits a person from petitioning the court to
4 seal records relating to certain offenses related to driving, operating or controlling a
5 vehicle or vessel while under the influence of intoxicating liquor or a controlled
6 substance.
7 Existing law authorizes a person arrested for alleged criminal conduct to
8 petition for the sealing of all records relating to the arrest if the charges were
9 dismissed or the person was acquitted of the charges. (NRS 179.255) **Section 2** of
10 this bill authorizes such a person to petition for the sealing of all records relating to
11 an arrest if the prosecuting attorney declines to prosecute the charges.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

- 1 **Section 1.** NRS 179.245 is hereby amended to read as follows:
2 179.245 1. Except as otherwise provided in subsection 5 and
3 NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a
4 person may petition the court in which the person was convicted for
5 the sealing of all records relating to a conviction of:



1 (a) A category A or B felony after 15 years from the date of
2 release from actual custody or discharge from parole or probation,
3 whichever occurs later;

4 (b) A category C or D felony after 12 years from the date of
5 release from actual custody or discharge from parole or probation,
6 whichever occurs later;

7 (c) A category E felony after 7 years from the date of release
8 from actual custody or discharge from parole or probation,
9 whichever occurs later;

10 (d) Any gross misdemeanor after 7 years from the date of
11 release from actual custody or discharge from probation, whichever
12 occurs later;

13 (e) A violation of NRS 484C.110 or 484C.120 other than a
14 felony, or a battery which constitutes domestic violence pursuant to
15 NRS 33.018 other than a felony, after 7 years from the date of
16 release from actual custody or from the date when the person is no
17 longer under a suspended sentence, whichever occurs later; or

18 (f) Any other misdemeanor after 2 years from the date of release
19 from actual custody or from the date when the person is no longer
20 under a suspended sentence, whichever occurs later.

21 2. A petition filed pursuant to subsection 1 must:

22 (a) Be accompanied by current, verified records of the
23 petitioner's criminal history received from:

24 (1) The Central Repository for Nevada Records of Criminal
25 History; and

26 (2) The local law enforcement agency of the city or county in
27 which the conviction was entered;

28 (b) Include a list of any other public or private agency,
29 company, official or other custodian of records that is reasonably
30 known to the petitioner to have possession of records of the
31 conviction and to whom the order to seal records, if issued, will be
32 directed; and

33 (c) Include information that, to the best knowledge and belief of
34 the petitioner, accurately and completely identifies the records to be
35 sealed.

36 3. Upon receiving a petition pursuant to this section, the court
37 shall notify the law enforcement agency that arrested the petitioner
38 for the crime and:

39 (a) If the person was convicted in a district court or justice court,
40 the prosecuting attorney for the county; or

41 (b) If the person was convicted in a municipal court, the
42 prosecuting attorney for the city.

43 ↪ The prosecuting attorney and any person having relevant
44 evidence may testify and present evidence at the hearing on the
45 petition.



1 4. If, after the hearing, the court finds that, in the period
2 prescribed in subsection 1, the petitioner has not been charged with
3 any offense for which the charges are pending or convicted of any
4 offense, except for minor moving or standing traffic violations, the
5 court may order sealed all records of the conviction which are in the
6 custody of the court, of another court in the State of Nevada or of a
7 public or private agency, company or official in the State of Nevada,
8 and may also order all such criminal identification records of the
9 petitioner returned to the file of the court where the proceeding was
10 commenced from, including, but not limited to, the Federal Bureau
11 of Investigation, the California Bureau of Criminal Identification
12 and Information, sheriffs' offices and all other law enforcement
13 agencies reasonably known by either the petitioner or the court to
14 have possession of such records.

15 5. A person may not petition the court to seal records relating
16 to a conviction of ~~1+~~:

17 (a) A crime against a child ~~1+or a+~~;

18 (b) A sexual offense ~~1+~~;

19 (c) *A violation of NRS 484C.110 or 484C.120 that is*
20 *punishable as a felony pursuant to paragraph (c) of subsection 1*
21 *of NRS 484C.400;*

22 (d) *A violation of NRS 484C.430;*

23 (e) *A homicide resulting from driving or being in actual*
24 *physical control of a vehicle while under the influence of*
25 *intoxicating liquor or a controlled substance or resulting from any*
26 *other conduct prohibited by NRS 484C.110, 484C.130 or*
27 *484C.430;*

28 (f) *A violation of NRS 488.410 that is punishable as a felony*
29 *pursuant to NRS 488.427; or*

30 (g) *A violation of NRS 488.420 or 488.425.*

31 6. If the court grants a petition for the sealing of records
32 pursuant to this section, upon the request of the person whose
33 records are sealed, the court may order sealed all records of the civil
34 proceeding in which the records were sealed.

35 7. As used in this section:

36 (a) "Crime against a child" has the meaning ascribed to it in
37 NRS 179D.0357.

38 (b) "Sexual offense" means:

39 (1) Murder of the first degree committed in the perpetration
40 or attempted perpetration of sexual assault or of sexual abuse or
41 sexual molestation of a child less than 14 years of age pursuant to
42 paragraph (b) of subsection 1 of NRS 200.030.

43 (2) Sexual assault pursuant to NRS 200.366.

44 (3) Statutory sexual seduction pursuant to NRS 200.368, if
45 punishable as a felony.



1 (4) Battery with intent to commit sexual assault pursuant to
2 NRS 200.400.

3 (5) An offense involving the administration of a drug to
4 another person with the intent to enable or assist the commission of
5 a felony pursuant to NRS 200.405, if the felony is an offense listed
6 in this paragraph.

7 (6) An offense involving the administration of a controlled
8 substance to another person with the intent to enable or assist the
9 commission of a crime of violence pursuant to NRS 200.408, if the
10 crime of violence is an offense listed in this paragraph.

11 (7) Abuse of a child pursuant to NRS 200.508, if the abuse
12 involved sexual abuse or sexual exploitation.

13 (8) An offense involving pornography and a minor pursuant
14 to NRS 200.710 to 200.730, inclusive.

15 (9) Incest pursuant to NRS 201.180.

16 (10) Solicitation of a minor to engage in acts constituting the
17 infamous crime against nature pursuant to NRS 201.195.

18 (11) Open or gross lewdness pursuant to NRS 201.210, if
19 punishable as a felony.

20 (12) Indecent or obscene exposure pursuant to NRS 201.220,
21 if punishable as a felony.

22 (13) Lewdness with a child pursuant to NRS 201.230.

23 (14) Sexual penetration of a dead human body pursuant to
24 NRS 201.450.

25 (15) Luring a child or a person with mental illness pursuant
26 to NRS 201.560, if punishable as a felony.

27 (16) An attempt to commit an offense listed in subparagraphs
28 (1) to (15), inclusive.

29 **Sec. 2.** NRS 179.255 is hereby amended to read as follows:

30 179.255 1. If a person has been arrested for alleged criminal
31 conduct and the charges are dismissed, *the prosecuting attorney*
32 *having jurisdiction declined prosecution of the charges* or such
33 person is acquitted of the charges, the person may petition:

34 (a) The court in which the charges were dismissed, at any time
35 after the date the charges were dismissed; ~~or~~

36 (b) *The court having jurisdiction in which the charges were*
37 *declined for prosecution:*

38 (1) *Any time after the applicable statute of limitations has*
39 *run;*

40 (2) *Any time 10 years after the arrest; or*

41 (3) *Pursuant to a stipulation between the parties; or*

42 (c) The court in which the acquittal was entered, at any time
43 after the date of the acquittal,

44 ➔ for the sealing of all records relating to the arrest and the
45 proceedings leading to the dismissal, *declination* or acquittal.



1 2. If the conviction of a person is set aside pursuant to NRS
2 458A.240, the person may petition the court that set aside the
3 conviction, at any time after the conviction has been set aside, for
4 the sealing of all records relating to the setting aside of the
5 conviction.

6 3. A petition filed pursuant to subsection 1 or 2 must:

7 (a) Be accompanied by a current, verified record of the criminal
8 history of the petitioner received from the local law enforcement
9 agency of the city or county in which the petitioner appeared in
10 court;

11 (b) Include a list of any other public or private agency,
12 company, official and other custodian of records that is reasonably
13 known to the petitioner to have possession of records of the arrest
14 and of the proceedings leading to the dismissal, *declination* or
15 acquittal and to whom the order to seal records, if issued, will be
16 directed; and

17 (c) Include information that, to the best knowledge and belief of
18 the petitioner, accurately and completely identifies the records to be
19 sealed.

20 4. Upon receiving a petition pursuant to subsection 1, the court
21 shall notify the law enforcement agency that arrested the petitioner
22 for the crime and:

23 (a) If the charges were dismissed, *declined for prosecution* or
24 the acquittal was entered in a district court or justice court, the
25 prosecuting attorney for the county; or

26 (b) If the charges were dismissed, *declined for prosecution* or
27 the acquittal was entered in a municipal court, the prosecuting
28 attorney for the city.

29 ➤ The prosecuting attorney and any person having relevant
30 evidence may testify and present evidence at the hearing on the
31 petition.

32 5. Upon receiving a petition pursuant to subsection 2, the court
33 shall notify:

34 (a) If the conviction was set aside in a district court or justice
35 court, the prosecuting attorney for the county; or

36 (b) If the conviction was set aside in a municipal court, the
37 prosecuting attorney for the city.

38 ➤ The prosecuting attorney and any person having relevant
39 evidence may testify and present evidence at the hearing on the
40 petition.

41 6. If, after the hearing on a petition submitted pursuant to
42 subsection 1, the court finds that there has been an acquittal, *that*
43 *the prosecution was declined* or that the charges were dismissed
44 and there is no evidence that further action will be brought against
45 the person, the court may order sealed all records of the arrest and of



1 the proceedings leading to the acquittal , *declination* or dismissal
2 which are in the custody of the court, of another court in the State of
3 Nevada or of a public or private company, agency or official in the
4 State of Nevada.

5 7. If, after the hearing on a petition submitted pursuant to
6 subsection 2, the court finds that the conviction of the petitioner was
7 set aside pursuant to NRS 458A.240, the court may order sealed all
8 records relating to the setting aside of the conviction which are in
9 the custody of the court, of another court in the State of Nevada or
10 of a public or private company, agency or official in the State of
11 Nevada.

12 *8. If the prosecuting attorney having jurisdiction previously*
13 *declined prosecution of the charges and the records of the arrest*
14 *have been sealed pursuant to subsection 6, the prosecuting*
15 *attorney may subsequently file the charges at any time before the*
16 *running of the statute of limitations for those charges. If such*
17 *charges are filed with the court, the court shall order the*
18 *inspection of the records without the prosecuting attorney having*
19 *to petition the court pursuant to NRS 179.295.*

20 **Sec. 3.** NRS 179.295 is hereby amended to read as follows:

21 179.295 1. The person who is the subject of the records that
22 are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255,
23 179.259, 453.3365 or 458.330 may petition the court that ordered
24 the records sealed to permit inspection of the records by a person
25 named in the petition, and the court may order such inspection.
26 Except as otherwise provided in this section , *subsection 8 of NRS*
27 *179.255* and NRS 179.259 and 179.301, the court may not order the
28 inspection of the records under any other circumstances.

29 2. If a person has been arrested, the charges have been
30 dismissed and the records of the arrest have been sealed, the court
31 may order the inspection of the records by a prosecuting attorney
32 upon a showing that as a result of newly discovered evidence, the
33 person has been arrested for the same or a similar offense and that
34 there is sufficient evidence reasonably to conclude that the person
35 will stand trial for the offense.

36 3. The court may, upon the application of a prosecuting
37 attorney or an attorney representing a defendant in a criminal action,
38 order an inspection of such records for the purpose of obtaining
39 information relating to persons who were involved in the incident
40 recorded.

41 4. This section does not prohibit a court from considering a
42 conviction for which records have been sealed pursuant to NRS
43 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
44 458.330 in determining whether to grant a petition pursuant to



- 1 NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
- 2 458.330 for a conviction of another offense.
- 3 **Sec. 4.** This act becomes effective on January 1, 2014.

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