

SENATE BILL NO. 45—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE RECORDS AND TECHNOLOGY DIVISION)

PREFILED DECEMBER 20, 2012

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing the sealing and removal of certain records of criminal history. (BDR 14-345)

FISCAL NOTE: Effect on Local Government: May have Fiscal Impact. Effect on the State: Yes.

~

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

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

Legislative Counsel’s Digest:

1 Existing law authorizes a person to petition the court in certain circumstances
2 for the sealing of all records of criminal history relating to a conviction of a crime,
3 the dismissal or acquittal of charges or the setting aside of a conviction of a crime.
4 (NRS 179.245, 179.255) **Sections 6 and 7** of this bill revise provisions governing
5 the information that such a petition must include and generally expand the
6 applicability of certain provisions relating to the sealing of such records to all
7 agencies of criminal justice which maintain the records.

8 Existing law also authorizes a person who is acquitted of a charge or to whom
9 the disposition of a charge is favorable to apply in writing to the Central Repository
10 for Nevada Records of Criminal History and the agency which maintains a record
11 of criminal history relating to such a charge to have the record removed. (NRS
12 179A.160) **Section 11** of this bill revises this requirement and specifies that a
13 person must apply to the Central Repository and all agencies of criminal justice
14 which maintain the record. **Section 11** also requires such an application to include
15 certain information similar to the information required in a petition to the court
16 pursuant to **sections 6 and 7**, and requires, with certain exceptions, the Central
17 Repository and all agencies of criminal justice which maintain the record to remove
18 the record without a court order upon receipt of a complete written application and
19 verification of the information contained in the application.

20 **Section 8** of this bill provides that each agency of criminal justice named in an
21 order for the sealing of records must be provided a copy of the order. **Section 10** of
22 this bill revises the definition of “agency of criminal justice” by specifying that the



23 term also includes a subunit of any governmental agency which performs a function
24 in the administration of criminal justice pursuant to a statute or executive order and
25 which allocates a substantial part of its budget to a function in the administration of
26 criminal justice.

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

1 **Section 1.** Chapter 179 of NRS is hereby amended by adding
2 thereto the provisions set forth as sections 2 to 5, inclusive, of this
3 act.

4 **Sec. 2.** *As used in this section and NRS 179.245 to 179.301,*
5 *inclusive, unless the context otherwise requires, the words and*
6 *terms defined in sections 3, 4 and 5 of this act have the meanings*
7 *ascribed to them in those sections.*

8 **Sec. 3.** *“Agency of criminal justice” has the meaning*
9 *ascribed to it in NRS 179A.030.*

10 **Sec. 4.** *“Disposition” has the meaning ascribed to it in*
11 *NRS 179A.050.*

12 **Sec. 5.** *“Record” has the meaning ascribed to “record of*
13 *criminal history” in NRS 179A.070.*

14 **Sec. 6.** NRS 179.245 is hereby amended to read as follows:
15 179.245 1. Except as otherwise provided in subsection 5 and
16 NRS 176A.265, 176A.295, 179.259, 453.3365 and 458.330, a
17 person may petition the court in which the person was convicted for
18 the sealing of all records relating to a conviction of:

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

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

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

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

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



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

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

5 (a) Be accompanied by *the petitioner's* current, verified records
6 ~~{of the petitioner's criminal history}~~ received from:

7 (1) The Central Repository for Nevada Records of Criminal
8 History; and

9 (2) ~~{The local law enforcement agency}~~ *All agencies* of
10 *criminal justice which maintain such records within* the city or
11 county in which the conviction was entered;

12 (b) *If the petition references NRS 453.3365 or 458.330, include*
13 *a certificate of acknowledgment or the disposition of the*
14 *proceedings for the records to be sealed from all agencies of*
15 *criminal justice which maintain such records;*

16 (c) Include a list of any other public or private agency, company,
17 official or other custodian of records that is reasonably known to the
18 petitioner to have possession of records of the conviction and to
19 whom the order to seal records, if issued, will be directed; and

20 ~~{e}~~ (d) Include information that, to the best knowledge and
21 belief of the petitioner, accurately and completely identifies the
22 records to be sealed ~~{}~~, *including, without limitation, the:*

23 (1) *Date of birth of the petitioner;*

24 (2) *Specific conviction to which the records to be sealed*
25 *pertain; and*

26 (3) *Date of arrest relating to the specific conviction to*
27 *which the records to be sealed pertain.*

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

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

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

35 ➔ The prosecuting attorney and any person having relevant
36 evidence may testify and present evidence at the hearing on the
37 petition.

38 4. If, after the hearing, the court finds that, in the period
39 prescribed in subsection 1, the petitioner has not been charged with
40 any offense for which the charges are pending or convicted of any
41 offense, except for minor moving or standing traffic violations, the
42 court may order sealed all records of the conviction which are in the
43 custody of ~~{the court, of another court in the State of Nevada}~~ *any*
44 *agency of criminal justice* or ~~{of a}~~ *any* public or private agency,
45 company, ~~{or}~~ *official or other custodian of records* in the State of



1 Nevada, and may also order all such ~~criminal identification~~
2 records of the petitioner returned to the file of the court where the
3 proceeding was commenced from, including, ~~but not limited to,~~
4 *without limitation*, the Federal Bureau of Investigation, the
5 California Bureau of Criminal Identification and Information ~~;~~
6 ~~sheriffs' offices~~ and all ~~other law enforcement~~ agencies of
7 *criminal justice which maintain such records and which are*
8 reasonably known by either the petitioner or the court to have
9 possession of such records.

10 5. A person may not petition the court to seal records relating
11 to a conviction of a crime against a child or a sexual offense.

12 6. If the court grants a petition for the sealing of records
13 pursuant to this section, upon the request of the person whose
14 records are sealed, the court may order sealed all records of the civil
15 proceeding in which the records were sealed.

16 7. As used in this section:

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

19 (b) "Sexual offense" means:

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

24 (2) Sexual assault pursuant to NRS 200.366.

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

27 (4) Battery with intent to commit sexual assault pursuant to
28 NRS 200.400.

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

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

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

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

41 (9) Incest pursuant to NRS 201.180.

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

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



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

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

4 (14) Sexual penetration of a dead human body pursuant to
5 NRS 201.450.

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

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

10 **Sec. 7.** NRS 179.255 is hereby amended to read as follows:

11 179.255 1. If a person has been arrested for alleged criminal
12 conduct and the charges are dismissed or such person is acquitted of
13 the charges, the person may petition:

14 (a) The court in which the charges were dismissed, at any time
15 after the date the charges were dismissed; or

16 (b) The court in which the acquittal was entered, at any time
17 after the date of the acquittal,

18 ➤ for the sealing of all records relating to the arrest and the
19 proceedings leading to the dismissal or acquittal.

20 2. If the conviction of a person is set aside pursuant to NRS
21 458A.240, the person may petition the court that set aside the
22 conviction, at any time after the conviction has been set aside, for
23 the sealing of all records relating to the setting aside of the
24 conviction.

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

26 (a) Be accompanied by ~~the~~ *the petitioner's* current, verified
27 ~~record of the criminal history of the petitioner~~ *records* received
28 from ~~the local law enforcement agency~~ :

29 *(1) The Central Repository for Nevada Records of Criminal*
30 *History; and*

31 *(2) All agencies of criminal justice which maintain such*
32 *records within* the city or county in which the petitioner appeared in
33 court;

34 (b) *Except as otherwise provided in paragraph (c), include the*
35 *disposition of the proceedings for the records to be sealed;*

36 (c) *If the petition references NRS 453.3365 or 458.330, include*
37 *a certificate of acknowledgment or the disposition of the*
38 *proceedings for the records to be sealed from all agencies of*
39 *criminal justice which maintain such records;*

40 (d) Include a list of any other public or private agency,
41 company, official and other custodian of records that is reasonably
42 known to the petitioner to have possession of records of the arrest
43 and of the proceedings leading to the dismissal or acquittal and to
44 whom the order to seal records, if issued, will be directed; and



1 ~~(e)~~ (e) Include information that, to the best knowledge and
2 belief of the petitioner, accurately and completely identifies the
3 records to be sealed ~~H~~, **including, without limitation, the:**

4 **(1) Date of birth of the petitioner;**

5 **(2) Specific charges that were dismissed or of which the**
6 **petitioner was acquitted; and**

7 **(3) Date of arrest relating to the specific charges that were**
8 **dismissed or of which the petitioner was acquitted.**

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

12 (a) If the charges were dismissed or the acquittal was entered in
13 a district court or justice court, the prosecuting attorney for the
14 county; or

15 (b) If the charges were dismissed or the acquittal was entered in
16 a municipal court, the prosecuting attorney for the city.

17 ↪ The prosecuting attorney and any person having relevant
18 evidence may testify and present evidence at the hearing on the
19 petition.

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

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

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

26 ↪ The prosecuting attorney and any person having relevant
27 evidence may testify and present evidence at the hearing on the
28 petition.

29 6. If, after the hearing on a petition submitted pursuant to
30 subsection 1, the court finds that there has been an acquittal or that
31 the charges were dismissed and there is no evidence that further
32 action will be brought against the person, the court may order sealed
33 all records of the arrest and of the proceedings leading to the
34 acquittal or dismissal which are in the custody of ~~the court, of~~
35 ~~another court in the State of Nevada~~ **any agency of criminal justice**
36 **or ~~of a~~ any** public or private company, agency, ~~or~~ official **or**
37 **other custodian of records** in the State of Nevada.

38 7. If, after the hearing on a petition submitted pursuant to
39 subsection 2, the court finds that the conviction of the petitioner was
40 set aside pursuant to NRS 458A.240, the court may order sealed all
41 records relating to the setting aside of the conviction which are in
42 the custody of ~~the court, of another court in the State of Nevada~~
43 **any agency of criminal justice** or ~~of a~~ **any** public or private
44 company, agency, ~~or~~ official **or other custodian of records** in the
45 State of Nevada.



1 **Sec. 8.** NRS 179.275 is hereby amended to read as follows:

2 179.275 Where the court orders the sealing of a record
3 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259,
4 453.3365 or 458.330, a copy of the order must be sent to:

5 1. The Central Repository for Nevada Records of Criminal
6 History; and

7 2. Each *agency of criminal justice and each* public or private
8 company, agency, ~~for~~ official *or other custodian of records* named
9 in the order, and that person shall seal the records in his or her
10 custody which relate to the matters contained in the order, shall
11 advise the court of compliance and shall then seal the order.

12 **Sec. 9.** NRS 179.301 is hereby amended to read as follows:

13 179.301 1. The State Gaming Control Board and the Nevada
14 Gaming Commission and their employees, agents and
15 representatives may inquire into and inspect any records sealed
16 pursuant to NRS 179.245 or 179.255, if the event or conviction was
17 related to gaming, to determine the suitability or qualifications of
18 any person to hold a state gaming license, manufacturer's, seller's or
19 distributor's license or registration as a gaming employee pursuant
20 to chapter 463 of NRS. Events and convictions, if any, which are the
21 subject of an order sealing records:

22 (a) May form the basis for recommendation, denial or
23 revocation of those licenses.

24 (b) Must not form the basis for denial or rejection of a gaming
25 work permit unless the event or conviction relates to the applicant's
26 suitability or qualifications to hold the work permit.

27 2. A prosecuting attorney may inquire into and inspect any
28 records sealed pursuant to NRS 179.245 or 179.255 if:

29 (a) The records relate to a violation or alleged violation of NRS
30 202.575; and

31 (b) The person who is the subject of the records has been
32 arrested or issued a citation for violating NRS 202.575.

33 3. The Central Repository for Nevada Records of Criminal
34 History and its employees may inquire into and inspect any records
35 sealed pursuant to NRS 179.245 or 179.255 that constitute
36 information relating to sexual offenses, and may notify employers of
37 the information in accordance with NRS 179A.180 to 179A.240,
38 inclusive.

39 4. Records which have been sealed pursuant to NRS 179.245
40 or 179.255 and which are retained in the statewide registry
41 established pursuant to NRS 179B.200 may be inspected pursuant to
42 chapter 179B of NRS by an officer or employee of the Central
43 Repository for Nevada Records of Criminal History or a law
44 enforcement officer in the regular course of his or her duties.



1 5. The State Board of Pardons Commissioners and its agents
2 and representatives may inquire into and inspect any records sealed
3 pursuant to NRS 179.245 or 179.255 if the person who is the subject
4 of the records has applied for a pardon from the Board.

5 6. As used in this section:

6 (a) "Information relating to sexual offenses" means information
7 contained in or concerning a record ~~of criminal history, or the~~
8 ~~records of criminal history of the United States or another state,~~
9 relating in any way to a sexual offense.

10 (b) "Sexual offense" has the meaning ascribed to it in
11 NRS 179A.073.

12 **Sec. 10.** NRS 179A.030 is hereby amended to read as follows:

13 179A.030 "Agency of criminal justice" means:

14 1. Any court; and

15 2. Any governmental agency *or subunit of any governmental*
16 *agency* which performs a function in the administration of criminal
17 justice pursuant to a statute or executive order, and which allocates a
18 substantial part of its budget to a function in the administration of
19 criminal justice.

20 **Sec. 11.** NRS 179A.160 is hereby amended to read as follows:

21 179A.160 1. If a person has been arrested or issued a citation,
22 or has been the subject of a warrant for alleged criminal conduct and
23 the person is acquitted of the charge or the disposition of the charge
24 is favorable to the person, at any time after the charge is dismissed,
25 acquittal is entered or disposition of the charge in favor of the
26 person is final, the person who is the subject of a record of criminal
27 history relating to the arrest, citation or warrant may apply in
28 writing to the Central Repository and ~~the agency~~ *all agencies of*
29 *criminal justice* which ~~maintains~~ *maintain* the record to have it
30 removed from the files which are available and generally searched
31 for the purpose of responding to inquiries concerning the criminal
32 history of a person.

33 2. *A written application submitted pursuant to subsection 1*
34 *must:*

35 (a) *Be accompanied by the petitioner's current, verified record*
36 *of criminal history received from:*

37 (1) *The Central Repository; and*

38 (2) *All agencies of criminal justice which maintain the*
39 *record within the city or county in which the charge was*
40 *dismissed, the acquittal was entered or the disposition of the*
41 *charge in favor of the person was finalized; and*

42 (b) *Include information that, to the best knowledge and belief*
43 *of the petitioner, accurately and completely identifies the record to*
44 *be removed, including, without limitation, the:*

45 (1) *Date of birth of the petitioner;*



- 1 (2) *Specific charge to be removed; and*
- 2 (3) *Date of arrest relating to the specific charge to be*
- 3 *removed.*

4 3. The Central Repository and ~~the agency~~ *all agencies of*
5 *criminal justice which maintain the record* shall remove the record
6 *without a court order, upon receipt of a written application that*
7 *satisfies all requirements set forth in this section and verification*
8 *of the information contained in the application, unless:*

9 (a) The ~~defendant~~ *person who is the subject of the record* is a
10 fugitive;

11 (b) The case is under active prosecution according to a current
12 certificate of a prosecuting attorney;

13 (c) The disposition of the case was a deferred prosecution, plea
14 bargain or other similar disposition;

15 (d) The person who is the subject of the record has a prior
16 conviction for a felony or gross misdemeanor in any jurisdiction in
17 the United States; or

18 (e) The person who is the subject of the record has been arrested
19 for or charged with another crime, other than a minor traffic
20 violation, since the arrest, citation or warrant which the person seeks
21 to have removed from the record.

22 ~~3.1~~ 4. This section does not restrict the authority of a court to
23 order the deletion or modification of a record in a particular cause or
24 concerning a particular person or event.

25 **Sec. 12.** This act becomes effective on July 1, 2013.

