

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 of certain records of criminal history. (BDR 14-345)

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

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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 of criminal history; revising provisions governing the sealing 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 **Section 8** of this bill provides that each agency of criminal justice named in an
9 order for the sealing of records must be provided a copy of the order. **Section 10** of
10 this bill revises the definition of “agency of criminal justice” by specifying that the
11 term also includes a subunit of any governmental agency which performs a function
12 in the administration of criminal justice pursuant to a statute or executive order and
13 which allocates a substantial part of its budget to a function in the administration of
14 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

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

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

40 (a) Be accompanied by *the petitioner’s* current, verified records
41 ~~of the petitioner’s criminal history~~ received from:



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

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

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

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

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

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

18 (2) *Specific conviction to which the records to be sealed*
19 *pertain; and*

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

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

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

27 (b) If the person was convicted in a municipal court, the
28 prosecuting 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 4. If, after the hearing, the court finds that, in the period
33 prescribed in subsection 1, the petitioner has not been charged with
34 any offense for which the charges are pending or convicted of any
35 offense, except for minor moving or standing traffic violations, the
36 court may order sealed all records of the conviction which are in the
37 custody of ~~{the court, of another court in the State of Nevada}~~ *any*
38 *agency of criminal justice* or ~~{of a}~~ *any* public or private agency,
39 company, ~~{or}~~ *official or other custodian of records* in the State of
40 Nevada, and may also order all such ~~{criminal identification}~~
41 records of the petitioner returned to the file of the court where the
42 proceeding was commenced from, including, ~~{but not limited to,}~~
43 *without limitation*, the Federal Bureau of Investigation, the
44 California Bureau of Criminal Identification and Information ~~{}~~
45 ~~sheriffs' offices}~~ and all ~~{other law enforcement}~~ agencies *of*



1 *criminal justice which maintain such records and which are*
2 reasonably known by either the petitioner or the court to have
3 possession of such records.

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

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

10 7. As used in this section:

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

13 (b) "Sexual offense" means:

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

18 (2) Sexual assault pursuant to NRS 200.366.

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

21 (4) Battery with intent to commit sexual assault pursuant to
22 NRS 200.400.

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

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

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

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

35 (9) Incest pursuant to NRS 201.180.

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

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

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

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

43 (14) Sexual penetration of a dead human body pursuant to
44 NRS 201.450.



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

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

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

6 179.255 1. If a person has been arrested for alleged criminal
7 conduct and the charges are dismissed or such person is acquitted of
8 the charges, the person may petition:

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

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

13 ↪ for the sealing of all records relating to the arrest and the
14 proceedings leading to the dismissal or acquittal.

15 2. If the conviction of a person is set aside pursuant to NRS
16 458A.240, the person may petition the court that set aside the
17 conviction, at any time after the conviction has been set aside, for
18 the sealing of all records relating to the setting aside of the
19 conviction.

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

21 (a) Be accompanied by ~~{a}~~ *the petitioner's* current, verified
22 ~~{record of the criminal history of the petitioner}~~ *records* received
23 from ~~{the local law enforcement agency}~~ :

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

26 *(2) All agencies of criminal justice which maintain such*
27 *records within* the city or county in which the petitioner appeared in
28 court;

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

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

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

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

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

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



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

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

6 (a) If the charges were dismissed or the acquittal was entered in
7 a district court or justice court, the prosecuting attorney for the
8 county; or

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

11 ↳ The prosecuting attorney and any person having relevant
12 evidence may testify and present evidence at the hearing on the
13 petition.

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

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

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

20 ↳ The prosecuting attorney and any person having relevant
21 evidence may testify and present evidence at the hearing on the
22 petition.

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

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

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

41 179.275 Where the court orders the sealing of a record
42 pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259,
43 453.3365 or 458.330, a copy of the order must be sent to:

44 1. The Central Repository for Nevada Records of Criminal
45 History; and



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

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

7 179.301 1. The State Gaming Control Board and the Nevada
8 Gaming Commission and their employees, agents and
9 representatives may inquire into and inspect any records sealed
10 pursuant to NRS 179.245 or 179.255, if the event or conviction was
11 related to gaming, to determine the suitability or qualifications of
12 any person to hold a state gaming license, manufacturer's, seller's or
13 distributor's license or registration as a gaming employee pursuant
14 to chapter 463 of NRS. Events and convictions, if any, which are the
15 subject of an order sealing records:

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

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

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

23 (a) The records relate to a violation or alleged violation of NRS
24 202.575; and

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

27 3. The Central Repository for Nevada Records of Criminal
28 History and its employees may inquire into and inspect any records
29 sealed pursuant to NRS 179.245 or 179.255 that constitute
30 information relating to sexual offenses, and may notify employers of
31 the information in accordance with NRS 179A.180 to 179A.240,
32 inclusive.

33 4. Records which have been sealed pursuant to NRS 179.245
34 or 179.255 and which are retained in the statewide registry
35 established pursuant to NRS 179B.200 may be inspected pursuant to
36 chapter 179B of NRS by an officer or employee of the Central
37 Repository for Nevada Records of Criminal History or a law
38 enforcement officer in the regular course of his or her duties.

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

43 6. As used in this section:

44 (a) "Information relating to sexual offenses" means information
45 contained in or concerning a record ~~of criminal history, or the~~



- 1 ~~records of criminal history of the United States or another state,~~
2 relating in any way to a sexual offense.
3 (b) "Sexual offense" has the meaning ascribed to it in
4 NRS 179A.073.
5 **Sec. 10.** NRS 179A.030 is hereby amended to read as follows:
6 179A.030 "Agency of criminal justice" means:
7 1. Any court; and
8 2. Any governmental agency *or subunit of any governmental*
9 *agency* which performs a function in the administration of criminal
10 justice pursuant to a statute or executive order, and which allocates a
11 substantial part of its budget to a function in the administration of
12 criminal justice.
13 **Sec. 11.** (Deleted by amendment.)
14 **Sec. 12.** This act becomes effective on July 1, 2013.

