

SENATE BILL NO. 293—COMMITTEE ON HUMAN RESOURCES
AND FACILITIES

MARCH 3, 1999

Referred to Committee on Human Resources and Facilities

SUMMARY—Authorizes school district to consider dismissal of certain criminal proceedings related to controlled substances in order to determine applicant's suitability and qualifications for employment. (BDR 40-347)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State or on Industrial Insurance: 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 controlled substances; authorizing the board of trustees of a school district to consider the discharge and dismissal of criminal proceedings against certain persons placed on probation for committing crimes related to the possession, use or distribution of controlled substances in order to determine their suitability and qualifications for employment; and providing other matters properly relating thereto.

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

1 **Section 1.** NRS 453.3363 is hereby amended to read as follows:
2 453.3363 1. If a person who has not previously been convicted of
3 any offense pursuant to NRS 453.011 to 453.552, inclusive, or pursuant to
4 any statute of the United States or of any state relating to narcotic drugs,
5 marihuana, or stimulant, depressant or hallucinogenic substances, tenders a
6 plea of guilty, guilty but mentally ill, nolo contendere or similar plea to a
7 charge pursuant to NRS 453.336, 453.411 or 454.351, or is found guilty of
8 one of those charges, the court, without entering a judgment of conviction
9 and with the consent of the accused, may suspend further proceedings and
10 place him on probation upon terms and conditions that must include
11 attendance and successful completion of an educational program or, in the
12 case of a person dependent upon drugs, of a program of treatment and
13 rehabilitation pursuant to NRS 453.580.

2. Upon violation of a term or condition, the court may enter a judgment of conviction and proceed as provided in the section pursuant to which the accused was charged. Notwithstanding the provisions of paragraph (e) of subsection 2 of NRS 193.130, upon violation of a term or condition, the court may order the person to the custody of the department of prisons.

3. Upon fulfillment of the terms and conditions, the court shall discharge the accused and dismiss the proceedings against him. A nonpublic record of the dismissal must be transmitted to and retained by the division of parole and probation of the department of motor vehicles and public safety solely for the use of the courts in determining whether, in later proceedings, the person qualifies under this section.

4. Except as otherwise provided in ~~subsection 5,~~ *subsections 5 and 6*, discharge and dismissal under this section is without adjudication of guilt and is not a conviction for purposes of this section or for purposes of employment, civil rights or any statute or regulation or license or questionnaire or for any other public or private purpose, but is a conviction for the purpose of additional penalties imposed for second or subsequent convictions or the setting of bail. Discharge and dismissal restores the person discharged, in the contemplation of the law, to the status occupied before the arrest, indictment or information. He may not be held thereafter under any law to be guilty of perjury or otherwise giving a false statement by reason of failure to recite or acknowledge that arrest, indictment, information or trial in response to an inquiry made of him for any purpose. Discharge and dismissal under this section may occur only once with respect to any person.

5. A professional licensing board ~~may~~ :

(a) May consider a proceeding under this section in determining a person's suitability for a license or liability to discipline for misconduct.

~~{Such a board is}~~

(b) Is entitled for those purposes to a truthful answer from the applicant or licensee concerning any such proceeding with respect to him.

6. The board of trustees of a school district:

(a) May consider a proceeding under this section in determining a person's suitability and qualifications for employment with that district.

(b) Is entitled for those purposes to a truthful answer from an employee or prospective employee concerning any such proceeding with respect to him.

Sec. 2. NRS 453.3365 is hereby amended to read as follows:

453.3365 1. Three years after a person is convicted and sentenced pursuant to subsection 3 of NRS 453.336, the court may order sealed all documents, papers and exhibits in that person's record, minute book entries

1 and entries on dockets, and other documents relating to the case in the
2 custody of such other agencies and officers as are named in the court's
3 order, if the:

4 (a) Person fulfills the terms and conditions imposed by the court and the
5 parole and probation officer; and

6 (b) Court, after a hearing, is satisfied that the person is rehabilitated.

7 2. Except as limited by ~~subsection 4,~~ *subsections 4 and 5*, 3 years
8 after an accused is discharged from probation pursuant to NRS 453.3363,
9 the court shall order sealed all documents, papers and exhibits in that
10 person's record, minute book entries and entries on dockets, and other
11 documents relating to the case in the custody of such other agencies and
12 officers as are named in the court's order if the person fulfills the terms and
13 conditions imposed by the court and the division of parole and probation of
14 the department of motor vehicles and public safety. The court shall order
15 those records sealed without a hearing unless the division of parole and
16 probation petitions the court, for good cause shown, not to seal the records
17 and requests a hearing thereon.

18 3. If the court orders sealed the record of a person discharged pursuant
19 to NRS 453.3363, it shall send a copy of the order to each agency or officer
20 named in the order. Each such agency or officer shall notify the court in
21 writing of its compliance with the order.

22 4. A professional licensing board is entitled, for the purpose of
23 determining *a person's* suitability for a license or liability to discipline for
24 misconduct, to inspect and to copy from a record sealed pursuant to this
25 section.

26 *5. The board of trustees of a school district is entitled, for the*
27 *purpose of determining a person's suitability and qualifications for*
28 *employment with that district, to inspect and to copy from a record sealed*
29 *pursuant to this section.*

30 **Sec. 3.** NRS 179.285 is hereby amended to read as follows:

31 179.285 Except as otherwise provided in NRS 179.301 ~~§~~ *and*
32 *453.3363*, if the court orders a record sealed pursuant to NRS 179.245,
33 179.255 or 453.3365, all proceedings recounted in the record are deemed
34 never to have occurred, and the person to whom it pertains may properly
35 answer accordingly to any inquiry concerning the arrest, conviction or
36 acquittal and the events and proceedings relating to the arrest, conviction or
37 acquittal.

38 **Sec. 4.** This act becomes effective on July 1, 1999.