

SENATE BILL NO. 488—COMMITTEE ON HUMAN RESOURCES
AND FACILITIES

(ON BEHALF OF WASHOE COUNTY SCHOOL DISTRICT)

MARCH 18, 1999

Referred to Committee on Human Resources and Facilities

SUMMARY—Authorizes state board of education and county school districts to consider certain criminal proceedings and sealed records for purpose of licensing, employment or discipline of personnel. (BDR 40-343)

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 ~~for omitted material~~ is material to be omitted.

AN ACT relating to education; authorizing the state board of education and a county school district to consider certain criminal proceedings and to inspect certain sealed records for the purpose of licensing, employment or discipline of personnel; 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~~ **Except as otherwise provided in subsections 5 and 6, 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 consider a proceeding under this section in determining suitability for a license or ~~liability to~~ **imposition of** discipline for misconduct. Such a board is entitled for those purposes to a truthful answer from the applicant or licensee concerning any such proceeding with respect to him.

6. The state board of education and the board of trustees of a county school district may consider a proceeding under this section in determining suitability for a license, suitability for employment or imposition of discipline for misconduct. The state board of education and the board of trustees of a county school district are entitled for those purposes to a truthful answer from the applicant, licensee or 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 suitability for a license or ~~liability to~~ *imposition of* discipline
24 for misconduct, to inspect and to copy from a record sealed pursuant to this
25 section.

26 *5. The state board of education and the board of trustees of a county*
27 *school district are entitled, for the purpose of determining suitability for a*
28 *license, suitability for employment or imposition of discipline for*
29 *misconduct, to inspect and to copy from a record sealed pursuant to this*
30 *section.*

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

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

39 **Sec. 4.** NRS 179.295 is hereby amended to read as follows:

40 179.295 1. The person who is the subject of the records that are
41 sealed pursuant to NRS 179.245, 179.255 or 453.3365 may petition the
42 court that ordered the records sealed to permit inspection of the records by
43 a person named in the petition, and the court may order such inspection.

1 Except as otherwise provided in this section and NRS 179.301 ~~(h)~~ and
2 **453.3365**, the court may not order the inspection of the records under any
3 other circumstances.

4 2. If a person has been arrested, the charges have been dismissed and
5 the records of the arrest have been sealed, the court may order the
6 inspection of the records by a prosecuting attorney upon a showing that as a
7 result of newly discovered evidence, the person has been arrested for the
8 same or similar offense and that there is sufficient evidence reasonably to
9 conclude that he will stand trial for the offense.

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

14 **Sec. 5.** NRS 391.312 is hereby amended to read as follows:

15 391.312 1. A teacher may be suspended, dismissed or not
16 reemployed and an administrator may be demoted, suspended, dismissed or
17 not reemployed for the following reasons:

18 (a) Inefficiency;

19 (b) Immorality;

20 (c) Unprofessional conduct;

21 (d) Insubordination;

22 (e) Neglect of duty;

23 (f) Physical or mental incapacity;

24 (g) A justifiable decrease in the number of positions due to decreased
25 enrollment or district reorganization;

26 (h) Conviction of a felony or of a crime involving moral turpitude;

27 (i) ***Suspension of proceedings or dismissal of charges pursuant to***
28 ***NRS 453.3363;***

29 (j) Inadequate performance;

30 ~~(j)(k)~~ (k) Evident unfitness for service;

31 ~~(k)(l)~~ (l) Failure to comply with such reasonable requirements as a board
32 may prescribe;

33 ~~(l)(m)~~ (m) Failure to show normal improvement and evidence of
34 professional training and growth;

35 ~~(m)(n)~~ (n) Advocating overthrow of the Government of the United States
36 or of the State of Nevada by force, violence or other unlawful means, or the
37 advocating or teaching of communism with the intent to indoctrinate pupils
38 to subscribe to communistic philosophy;

39 ~~(n)(o)~~ (o) Any cause which constitutes grounds for the revocation of a
40 teacher's license;

41 ~~(o)(p)~~ (p) Willful neglect or failure to observe and carry out the
42 requirements of this Title; or

43 ~~(p)(q)~~

(q) Dishonesty.

2. In determining whether the professional performance of a licensed employee is inadequate, consideration must be given to the regular and special evaluation reports prepared in accordance with the policy of the employing school district and to any written standards of performance which may have been adopted by the board.

Sec. 6. NRS 391.313 is hereby amended to read as follows:

391.313 1. Whenever an administrator charged with supervision of a licensed employee believes it is necessary to admonish the employee for a reason that he believes may lead to demotion ~~or~~ dismissal or cause the employee not to be reemployed under the provisions of NRS 391.312, he shall:

(a) Except as otherwise provided in subsection 2, bring the matter to the attention of the employee involved, in writing, stating the reasons for the admonition and that it may lead to his demotion ~~or~~ dismissal or a refusal to reemploy him, and make a reasonable effort to assist the employee to correct whatever appears to be the cause for his potential demotion ~~or~~ dismissal or a potential recommendation not to reemploy him; and

(b) Except as otherwise provided in NRS 391.314, allow reasonable time for improvement, which must not exceed 3 months for the first admonition.

An admonition issued to a licensed employee who, within the time granted for improvement, has met the standards set for him by the administrator who issued the admonition must be removed from the records of the employee together with all notations and indications of its having been issued. The admonition must be removed from the records of the employee not later than 3 years after it is issued.

2. An administrator need not admonish an employee pursuant to paragraph (a) of subsection 1 if his employment will be terminated pursuant to NRS 391.3197. If by February 15 of the first or second year of his probationary period a probationary employee does not receive a written notice pursuant to subsection 4 of NRS 391.3125 of a potential decision not to reemploy him, he must receive an admonition before any such decision is made.

3. A licensed employee is subject to immediate dismissal or a refusal to reemploy according to the procedures provided in NRS 391.311 to 391.3197, inclusive, without the admonition required by this section, on grounds contained in paragraphs (b), (f), (g), (h), ~~(i)~~ and ~~(p)~~ (q) of subsection 1 of NRS 391.312.

Sec. 7. NRS 391.314 is hereby amended to read as follows:

391.314 1. If a superintendent has reason to believe that cause exists for the dismissal of a licensed employee and he is of the opinion that the immediate suspension of the employee is necessary in the best interests of the pupils in the district, the superintendent may suspend the employee

1 without notice and without a hearing. Notwithstanding the provisions of
2 NRS 391.312, a superintendent may suspend a licensed employee who has
3 been officially charged but not yet convicted of a felony or a crime
4 involving moral turpitude or immorality. If the charge is dismissed, *unless*
5 *the charge is dismissed pursuant to NRS 453.3363*, or if the employee is
6 found not guilty, he must be reinstated with back pay, plus interest, and
7 normal seniority. The superintendent shall notify the employee in writing of
8 the suspension.

9 2. Within 5 days after a suspension becomes effective, the
10 superintendent shall begin proceedings pursuant to the provisions of NRS
11 391.312 to 391.3196, inclusive, to effect the employee's dismissal. The
12 employee is entitled to continue to receive his salary and other benefits
13 after the suspension becomes effective until the date on which the dismissal
14 proceedings are commenced. The superintendent may recommend that an
15 employee who has been charged with a felony or a crime involving
16 immorality be dismissed for another ground set forth in NRS 391.312.

17 3. If sufficient grounds for dismissal do not exist, the employee must
18 be reinstated with full compensation, plus interest.

19 4. A licensed employee who furnishes to the school district a bond or
20 other security which is acceptable to the board as a guarantee that he will
21 repay any amounts paid to him pursuant to this subsection as salary during
22 a period of suspension is entitled to continue to receive his salary from the
23 date on which the dismissal proceedings are commenced until the decision
24 of the board or the report of the hearing officer, if the report is final and
25 binding. The board shall not unreasonably refuse to accept security other
26 than a bond. An employee who receives salary pursuant to this subsection
27 shall repay it if he is dismissed or not reemployed as a result of a decision
28 of the board or a report of a hearing officer.

29 5. A licensed employee who is convicted of a crime which requires
30 registration pursuant to NRS 179D.200 to 179D.290, inclusive, or
31 179D.350 to 179D.550, inclusive, or is convicted of an act forbidden by
32 NRS 200.508, 201.190 or 201.265 forfeits all rights of employment from
33 the date of his arrest.

34 6. A licensed employee who is convicted of any crime and who is
35 sentenced to and serves any sentence of imprisonment forfeits all rights of
36 employment from the date of his arrest or the date on which his
37 employment terminated, whichever is later.

38 7. A licensed employee who is charged with a felony or a crime
39 involving immorality or moral turpitude and who waives his right to a
40 speedy trial while suspended may receive no more than 12 months of back
41 pay and seniority upon reinstatement if he is found not guilty or the charges
42 are dismissed, unless proceedings have been begun to dismiss the employee
43 upon one of the other grounds set forth in NRS 391.312.

1 8. A superintendent may discipline a licensed employee by suspending
2 the employee with loss of pay at any time after a hearing has been held
3 which affords the due process provided for in this chapter. The grounds for
4 suspension are the same as the grounds contained in NRS 391.312. An
5 employee may be suspended more than once during the employee's
6 contract year, but the total number of days of suspension may not exceed
7 20 in 1 contract year. Unless circumstances require otherwise, the
8 suspensions must be progressively longer.

9 **Sec. 8.** NRS 391.330 is hereby amended to read as follows:

10 391.330 The state board may suspend or revoke the license of any
11 teacher, administrator or other licensed employee, after notice and an
12 opportunity for hearing have been provided pursuant to NRS 391.322 and
13 391.323, for:

- 14 1. Immoral or unprofessional conduct.
- 15 2. Evident unfitness for service.
- 16 3. Physical or mental incapacity which renders the teacher,
17 administrator or other licensed employee unfit for service.
- 18 4. Conviction of a felony or crime involving moral turpitude.
- 19 5. *Suspension of proceedings or dismissal of charges pursuant to*
20 *NRS 453.3363.*

21 6. Conviction of a sex offense under NRS 200.366, 200.368, 201.190,
22 201.220, 201.230 or 207.260 in which a pupil enrolled in a school of a
23 county school district was the victim.

24 ~~6.7.~~ 7. Knowingly advocating the overthrow of the Federal
25 Government or of the State of Nevada by force, violence or unlawful
26 means.

27 ~~7.8.~~ 8. Persistent defiance of or refusal to obey the regulations of the
28 state board, the commission or the superintendent of public instruction,
29 defining and governing the duties of teachers, administrators and other
30 licensed employees.

31 **Sec. 9.** This act becomes effective upon passage and approval.