

Assembly Bill No. 328—Assemblymen Giunchigliani, Anderson, Arberry,
Bache, Freeman, Goldwater, Ocegüera and Williams

Joint Sponsor: Senator Neal

CHAPTER.....

AN ACT relating to criminal records; requiring information concerning the sealing of records and restoration of civil rights to be provided to certain persons; reducing the time required to lapse before a petition to seal certain criminal records may be brought; making various other changes concerning sealing criminal records; revising provisions governing the restoration of civil rights; and providing other matters properly relating thereto.

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

Section 1. Chapter 175 of NRS is hereby amended by adding thereto a new section to read as follows:

Upon the entry of a judgment of acquittal, the court shall provide the defendant with a written notice of the provisions of NRS 179.255 which concern the sealing of records of the proceedings leading to the acquittal.

Sec. 2. NRS 176A.850 is hereby amended to read as follows:

176A.850 1. A person who:

(a) Has fulfilled the conditions of his probation for the entire period thereof;

(b) Is recommended for earlier discharge by the division; or

(c) Has demonstrated his fitness for honorable discharge but because of economic hardship, verified by a parole and probation officer, has been unable to make restitution as ordered by the court, may be granted an honorable discharge from probation by order of the court.

2. Any amount of restitution remaining unpaid constitutes a civil liability arising upon the date of discharge.

3. A person honorably discharged from probation is free from the terms and conditions of his probation and may apply to the ~~court,~~ *division*, in person or by attorney, pursuant to NRS 176A.860, for the restoration of his civil rights ~~and~~ *and, to the court, pursuant to NRS 179.245, for the sealing of records relating to his conviction.* He must be informed of ~~this privilege~~ *these privileges* in his probation papers.

4. A person honorably discharged from probation who has had his civil rights restored by the court:

(a) Is exempt from the requirements of chapter 179C of NRS, but is not exempt from the requirements of chapter 179D of NRS.

(b) May vote, hold office or serve as a juror.

(c) Shall disclose the conviction to a gaming establishment and the state, its agencies, departments, boards, commissions and political subdivisions, if required in an application for employment, license or other permit. As used in this paragraph, "establishment" has the meaning ascribed to it in NRS 463.0148.

(d) Except as otherwise provided in paragraph (c), need not disclose the conviction to an employer or prospective employer.

5. The prior conviction of a person whose civil rights have been restored or who has been honorably discharged from probation may be used for purposes of impeachment. In any subsequent prosecution of the person who has had his civil rights restored or who has been honorably discharged from probation, the prior conviction may be pleaded and proved if otherwise admissible.

Sec. 3. NRS 176A.860 is hereby amended to read as follows:

176A.860 ~~{A convicted person who}~~

1. If a person is granted an honorable discharge from probation, ~~{who has}~~ not sooner than 6 months after his honorable discharge, the person may apply to the division to request a restoration of his civil rights if the person:

(a) Has not previously been restored to his civil rights ~~{, and who is}~~ ; and

*(b) Has not **been** convicted of any offense greater than a traffic violation ~~{within 6 months after the discharge, may apply}~~ after his honorable discharge.*

*2. If a person applies to the division to request a restoration of his civil rights ~~{The application must be accompanied by}~~ , the person must submit with his application a current, certified record of ~~{the applicant's}~~ his criminal history received from the central repository for Nevada records of criminal history. If the division determines after an investigation that the ~~{applicant}~~ person meets the requirements of this section, ~~{it}~~ the division shall petition the court in which the ~~{applicant}~~ person was convicted for an order granting the restoration ~~{of his civil rights}~~. If the division refuses to submit such a petition, the ~~{applicant}~~ person may, after notice to the division, directly petition the court for **an order granting the restoration of his civil rights**.*

Sec. 4. Chapter 178 of NRS is hereby amended by adding thereto a new section to read as follows:

Upon the entry of an order dismissing a criminal action or proceeding, the court shall provide the defendant with a written notice of the provisions of NRS 179.255 which concern the sealing of records of the proceedings leading to the dismissal.

Sec. 5. NRS 179.245 is hereby amended to read as follows:

179.245 1. Except as otherwise provided in subsection 5 and NRS 453.3365, a person ~~{who has been convicted of}~~ may petition the court in which he was convicted for the sealing of all records relating to a conviction of:

(a) ~~{Any felony may}~~ A category A or B felony after 15 years from the date of his ~~{conviction or, if he is imprisoned, from the date of his}~~ release from actual custody ~~{or discharge from parole or probation, whichever occurs later}~~;

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

(c) A category E felony after 10 years from the date of his release from actual custody or discharge from parole or probation, whichever occurs later;

(d) Any gross misdemeanor ~~may, after 10~~ after 7 years from the date of his ~~conviction or~~ release from actual custody ~~;~~

~~—(e)—~~ or discharge from probation, whichever occurs later;

(e) A violation of NRS 484.379 other than a felony, or a battery which constitutes domestic violence pursuant to NRS 33.018 other than a felony, ~~may,~~ after 7 years from the date of his ~~conviction or,~~ release from actual custody ~~;~~ or

~~—(d)—~~ or from the date when he is no longer under a suspended sentence, whichever occurs later; or

(f) Any other misdemeanor ~~may, after 5~~ after 3 years from the date of his ~~conviction or~~ release from actual custody ~~;~~ petition the court in which the conviction was obtained for the sealing of all records relating to the conviction, or from the date when he is no longer under a suspended sentence, whichever occurs later.

2. A petition filed pursuant to subsection 1 must ~~be~~ :

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

~~(a)~~ (1) The central repository for Nevada records of criminal history; and

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

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

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

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

(a) ~~The~~ If the person was convicted in a district court or justice's court, the prosecuting attorney for the county; or

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

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

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

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

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

7. As used in this section:

(a) “Crime against a child” has the meaning ascribed to it in NRS 179D.210.

(b) “Sexual offense” has the meaning ascribed to it in NRS 179D.410.

Sec. 6. NRS 179.255 is hereby amended to read as follows:

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

(a) The court in which the charges were dismissed, ~~not earlier than 30 days from~~ *at any time after* the date the charges were dismissed; or

(b) The court in which the acquittal was entered, ~~not earlier than 30 days from~~ *at any time after* the date of the acquittal, for the sealing of all records relating to the arrest and the proceedings leading to the *dismissal or* acquittal.

2. A petition filed pursuant to this section must ~~be~~ :

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

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

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

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

(a) ~~+~~ *If the charges were dismissed or the acquittal was entered in a district court or justice’s court, the* prosecuting attorney for the county; or

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

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

4. If, after the hearing, the court finds that there has been an acquittal or that the charges were dismissed and there is no evidence that further action will be brought against the person, the court may order sealed all records of the arrest and of the proceedings leading to the acquittal *or dismissal* which are in the custody of the court, of another court in the State of Nevada or of a public or private company, agency or official in the State of Nevada.

Sec. 7. NRS 179.285 is hereby amended to read as follows:

179.285 Except as otherwise provided in NRS 179.301, if the court orders a record sealed pursuant to NRS 179.245, 179.255 or 453.3365 ~~to~~ ~~that~~ :

1. All proceedings recounted in the record are deemed never to have occurred, and the person to whom ~~that~~ *the order* pertains may properly answer accordingly to any inquiry concerning the arrest, conviction, *dismissal* or acquittal and the events and proceedings relating to the arrest, conviction, *dismissal* or acquittal.

2. *The court shall order the civil rights of the person to whom the order pertains to be restored if the person has not been restored to his civil rights.*

Sec. 8. NRS 179.295 is hereby amended to read as follows:

179.295 1. The person who is the subject of the records that are sealed pursuant to NRS 179.245, 179.255 or 453.3365 may petition the court that ordered the records sealed to permit inspection of the records by a person named in the petition, and the court may order such inspection. Except as otherwise provided in this section and NRS 179.301, the court may not order the inspection of the records under any other circumstances.

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

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

4. *This section does not prohibit a court from considering a conviction for which records have been sealed pursuant to NRS 179.245, 179.255 or 453.3365 in determining whether to grant a petition pursuant to NRS 179.245, 179.255 or 453.3365 for a conviction of another offense.*

Sec. 9. NRS 179A.160 is hereby amended to read as follows:

179A.160 ~~At any time after a date 5 years after the arrest of a person, or after 5 years after the date of issuance of a citation or warrant, for an offense for which the person was acquitted or which ended in a disposition favorable to the person,~~

1. *If a person has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct and the person is acquitted of the charge or the disposition of the charge is favorable to the person, at any time after the charge is dismissed, acquittal is entered or disposition of the charge in favor of the person is final,* the person who is the subject of a record of criminal history relating to the arrest, citation or warrant may apply in writing to the central repository and the agency which maintains the record to have it removed from the files which are available and generally searched for the purpose of responding to inquiries concerning the criminal history of a person.

2. The central repository and the agency shall remove the record unless:

- ~~1.1~~ (a) The defendant is a fugitive ~~1~~;
~~2.1~~ ;
(b) The case is under active prosecution according to a current certificate of a prosecuting attorney ~~1~~;
~~3.1~~ ;
(c) The disposition of the case was a deferred prosecution, plea bargain or other similar disposition ~~1~~;
~~4.1~~ ;
(d) The person who is the subject of the record has a prior conviction for a felony or gross misdemeanor in any jurisdiction in the United States ~~1~~;
~~5.1~~ ; or
(e) The person who is the subject of the record has been arrested for or charged with another crime, other than a minor traffic violation, ~~during the 5 years~~ since the arrest, citation or warrant which he seeks to have removed from the record.

3. This section does not restrict the authority of a court to order the deletion or modification of a record in a particular cause or concerning a particular person or event.

Sec. 10. NRS 209.511 is hereby amended to read as follows:

209.511 1. When an offender is released from prison by expiration of his term of sentence, by pardon or by parole, the director:

- (a) May furnish him with a sum of money not to exceed \$100, the amount to be based upon the offender's economic need as determined by the director ; ~~1~~;
(b) Shall give him notice of the provisions of chapter 179C of NRS and NRS 202.360 ; ~~1~~;
(c) Shall require him to sign an acknowledgment of the notice required in paragraph (b) ; ~~1~~;
(d) *Shall give him notice of the provisions of NRS 179.245 and the provisions of NRS 213.090, 213.155 or 213.157, as applicable;*
(e) May provide him with clothing suitable for reentering society ~~1~~;
~~(e)~~ ;
(f) May provide him with the cost of transportation to his place of residence anywhere within the continental United States, or to the place of his conviction ~~1~~;
~~(f)~~ ; and
(g) Shall require him to submit to at least one test for exposure to the human immunodeficiency virus.

2. The costs authorized in paragraphs (a), ~~(d), (e) and~~ (e), (f) and (g) of subsection 1 must be paid out of the appropriate account within the state general fund for the use of the department as other claims against the state are paid to the extent that the costs have not been paid in accordance with subsection 5 of NRS 209.221 and NRS 209.246.

Sec. 11. NRS 213.090 is hereby amended to read as follows:

213.090 1. When a pardon is granted for any offense committed, the pardon may or may not include restoration of civil rights. If the pardon includes restoration of civil rights, it ~~shall~~ *must* be so stated in the instrument or certificate of ~~pardon~~ *pardon* and , when granted upon conditions, limitations or restrictions, they ~~shall~~ *must* be fully set forth in the instrument.

2. In any case where a convicted person has received a pardon without immediate restoration of his civil rights, ~~and has not been convicted of any offense greater than a traffic violation within 5 years after such pardon,~~ he may apply to the state board of pardons commissioners for restoration of his civil rights and release from penalties and disabilities resulting from the offense or crime of which he was convicted. ~~If, after investigation,~~

3. *Upon receiving an application pursuant to subsection 2, the board ~~determines that~~ shall determine whether the applicant ~~meets the requirements of this subsection, it~~ has received a pardon. If the board determines that the applicant has received a pardon, the board shall, as soon as reasonably practicable, restore him to his civil rights and release him from all penalties and disabilities resulting from the offense or crime of which he was convicted. ~~If the board refuses to grant such restoration and release, the applicant may, after notice to the board, petition the district court in which the conviction was obtained for an order directing the board to grant such restoration and release.~~*

4. *An applicant must not be required to pay a fee to have his civil rights restored or to be released from penalties and disabilities pursuant to this section.*

Sec. 12. NRS 213.155 is hereby amended to read as follows:

213.155 1. The board may restore a paroled prisoner to his civil rights, conditioned upon the prisoner receiving an honorable discharge from parole pursuant to NRS 213.154. Such restoration must take effect at the expiration of the parole of the prisoner.

2. In any case where a convicted person has completed his parole without immediate restoration of his civil rights ~~and~~ *and* has been issued an honorable discharge from parole pursuant to NRS 213.154, ~~and has not been convicted of any offense greater than a traffic violation within 5 years after completion of parole,~~ he may apply to the ~~state board of parole commissioners for~~ *division to request a* restoration of his civil rights and release from penalties and disabilities which resulted from the offense or crime of which he was convicted. ~~The application must be accompanied by a current, certified record of the applicant's criminal history received from the central repository for Nevada records of criminal history. If, after investigation, the board determines that the applicant meets the requirements of this subsection, it~~

3. *Upon receiving an application pursuant to subsection 2, the division shall determine whether the applicant has received an honorable discharge from parole. If the division determines that the applicant has received an honorable discharge, the division shall forward the application to the board.*

4. *Upon receiving an application pursuant to subsection 3, the board shall, as soon as reasonably practicable, restore ~~him~~ the applicant to his civil rights and release him from all penalties and disabilities resulting from the offense or crime of which he was convicted. ~~If the board refuses to grant such restoration and release, the applicant may, after notice to the board, petition the district court in which the conviction was obtained for an order directing the board to grant such restoration and release.~~*

5. An applicant must not be required to pay a fee to have his civil rights restored or to be released from penalties and disabilities pursuant to this section.

~~13-1~~ 6. The board may adopt regulations necessary or convenient for the purposes of this section.

Sec. 13. NRS 213.157 is hereby amended to read as follows:

213.157 *1.* In any case where a person convicted of a felony in the State of Nevada has served his sentence and been released from prison, ~~{and has not been convicted of any offense greater than a traffic violation within 5 years of his release,}~~ he may apply to the division requesting restoration of his civil rights and release from all penalties and disabilities which resulted from the offense or crime of which he was convicted. ~~{The application must be accompanied by a current, certified record of the applicant's criminal history received from the central repository for Nevada records of criminal history. If, after investigation, the division determines that the applicant meets the requirements of this section, it shall petition}~~

2. Upon receiving an application pursuant to subsection 1, the division shall determine whether the applicant has served his sentence and been released from prison. If the division determines that the applicant has served his sentence and been released from prison, the division shall forward the application to the district court in which the conviction was obtained . {for an order granting such restoration and release. If the division refuses to submit such petition, the applicant may, after giving notice to the division, petition such court directly for the restoration of his}

3. Upon receiving an application pursuant to subsection 2, the court shall, as soon as reasonably practicable, restore the civil rights of the applicant and release him from all penalties and disabilities which resulted from the offense or crime of which he was convicted.

4. An applicant must not be required to pay a fee to have his civil rights restored or to be released from penalties and disabilities pursuant to this section.

Sec. 14. The amendatory provisions of this act apply to:

1. A petition for an order to seal records pursuant to NRS 179.245 or 179.255 that is filed on or after the effective date of this act.

2. An application for restoration of civil rights pursuant to NRS 176A.860, 213.090, 213.155 or 213.157 that is filed on or after the effective date of this act.

Sec. 15. This act becomes effective upon passage and approval.