

ASSEMBLY BILL NO. 328—ASSEMBLYMEN GIUNCHIGLIANI, ANDERSON,
ARBERRY, BACHE, FREEMAN, GOLDWATER, OCEGUERA AND
WILLIAMS

MARCH 13, 2001

JOINT SPONSOR: SENATOR NEAL

Referred to Committee on Judiciary

SUMMARY—Makes various changes concerning sealing of criminal records and restoration
of civil rights. (BDR 14-122)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

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

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:

- 1 **Section 1.** Chapter 175 of NRS is hereby amended by adding thereto a
2 new section to read as follows:
3 *Upon the entry of a judgment of acquittal, the court shall provide the*
4 *defendant with a written notice of the provisions of NRS 179.255 which*
5 *concern the sealing of records of the proceedings leading to the acquittal.*
6 **Sec. 2.** NRS 176A.850 is hereby amended to read as follows:
7 176A.850 1. A person who:
8 (a) Has fulfilled the conditions of his probation for the entire period
9 thereof;
10 (b) Is recommended for earlier discharge by the division; or
11 (c) Has demonstrated his fitness for honorable discharge but because of
12 economic hardship, verified by a parole and probation officer, has been
13 unable to make restitution as ordered by the court,



* A B 3 2 8 R 1 *

1 may be granted an honorable discharge from probation by order of the
2 court.

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

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

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

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

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

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

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

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

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

30 176A.860 A convicted person who is granted an honorable discharge
31 from probation, who has not previously been restored to his civil rights,
32 ~~and who is not convicted of any offense greater than a traffic violation~~
33 ~~within 6 months after the discharge,~~ may apply to the division to request a
34 restoration of his civil rights. ~~The application must be accompanied by a~~
35 ~~current, certified record of the applicant's criminal history received from~~
36 ~~the central repository for Nevada records of criminal history.~~ If the
37 division determines after an investigation that the applicant ~~meets the~~
38 ~~requirements of this section,~~ *has been granted an honorable discharge*
39 *from probation,* it shall petition the court in which the applicant was
40 convicted for an order granting the restoration. If the division refuses to
41 submit such a petition, the applicant may, after notice to the division,
42 directly petition the court for restoration of his civil rights.

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

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



* A B 3 2 8 R 1 *

1 **Sec. 5.** NRS 179.245 is hereby amended to read as follows:
2 179.245 1. Except as otherwise provided in subsection 5 and NRS
3 453.3365, a person who has been convicted of:
4 (a) ~~Any~~ *A category A or B* felony may, after 15 years from the date of
5 his conviction or, if he is imprisoned, *or on parole or probation*, from the
6 date of his release from actual custody ~~or~~ *, or discharge from parole or*
7 *probation, whichever occurs later;*
8 (b) *A category C or D felony may, after 12 years from the date of his*
9 *conviction or, if he is imprisoned, or on parole or probation, from the*
10 *date of his release from actual custody, or discharge from parole or*
11 *probation, whichever occurs later;*
12 (c) *A category E felony may, after 10 years from the date of his*
13 *conviction or, if he is imprisoned, or on parole or probation, from the*
14 *date of his release from actual custody, or discharge from parole or*
15 *probation, whichever occurs later;*
16 (d) Any gross misdemeanor may, after ~~10~~ 7 years from the date of his
17 conviction or *, if he is incarcerated or on probation, from the date of his*
18 release from custody ~~or~~
19 ~~or discharge from probation, whichever occurs later;~~
20 (e) A violation of NRS 484.379 other than a felony, or a battery which
21 constitutes domestic violence pursuant to NRS 33.018 other than a felony
22 may, after 7 years from the date of his conviction or *, if he is incarcerated*
23 *or has had his sentence suspended, from the date of his* release from
24 custody ~~or~~
25 ~~or from the date when he is no longer under a suspended~~
26 *sentence, whichever occurs later; or*
27 (f) Any other misdemeanor may, after ~~15~~ 3 years from the date of his
28 conviction or *, if he is incarcerated or has had his sentence suspended,*
29 *from the date of his* release from custody ~~or~~ *or from the date when he is*
30 *no longer under a suspended sentence, whichever occurs later,*
31 petition the court in which the conviction was obtained for the sealing of
32 all records relating to the conviction.
33 2. A petition filed pursuant to subsection 1 must ~~be~~ :
34 (a) *Be* accompanied by current, verified records of the petitioner's
35 criminal history received from:
36 ~~(a)~~ (1) The central repository for Nevada records of criminal history;
37 and
38 ~~(b)~~ (2) The local law enforcement agency of the city or county in
39 which the conviction was entered ~~or~~ ;
40 (b) *Include a list of any other public or private agency, company,*
41 *official or other custodian of records that is reasonably known to the*
42 *petitioner to have possession of records of the conviction and to whom*
43 *the order to seal records, if issued, will be directed; and*
44 (c) *Include information that, to the best knowledge and belief of the*
45 *petitioner, accurately and completely identifies the records to be sealed.*
46 3. Upon receiving a petition pursuant to this section, the court shall
47 notify ~~the~~ *the law enforcement agency that arrested the petitioner for the*
48 *crime and;*



- 1 (a) ~~[[The]]~~ *If the person was convicted in a district court or justice's*
2 *court, the* prosecuting attorney for the county; or
3 (b) If the person was convicted in a municipal court, the prosecuting
4 attorney for the city.
5 The prosecuting attorney and any person having relevant evidence may
6 testify and present evidence at the hearing on the petition.
7 4. If, after the hearing, the court finds that, in the period prescribed in
8 subsection 1, the petitioner has not been ~~[[arrested,]]~~ *charged with any*
9 *offense for which the charges are pending or convicted of any offense,*
10 except for minor moving or standing traffic violations, the court may order
11 sealed all records of the conviction which are in the custody of the court, of
12 another court in the State of Nevada or of a public or private agency,
13 company or official in the State of Nevada, and may also order all such
14 criminal identification records of the petitioner returned to the file of the
15 court where the proceeding was commenced from, including, but not
16 limited to, the Federal Bureau of Investigation, the California identification
17 and investigation bureau, sheriffs' offices and all other law enforcement
18 agencies reasonably known by either the petitioner or the court to have
19 possession of such records.
20 5. A person may not petition the court to seal records relating to a
21 conviction of a crime against a child or a sexual offense.
22 6. *If the court grants a petition for the sealing of records pursuant to*
23 *this section, upon the request of the person whose records are sealed, the*
24 *court may order sealed all records of the civil proceeding in which the*
25 *records were sealed.*
26 7. As used in this section:
27 (a) "Crime against a child" has the meaning ascribed to it in NRS
28 179D.210.
29 (b) "Sexual offense" has the meaning ascribed to it in NRS 179D.410.
30 **Sec. 6.** NRS 179.255 is hereby amended to read as follows:
31 179.255 1. If a person has been arrested for alleged criminal conduct
32 and the charges are dismissed or such person is acquitted of the charges,
33 the person may petition:
34 (a) The court in which the charges were dismissed, ~~[[not earlier than 30~~
35 ~~days from]]~~ *at any time after* the date the charges were dismissed; or
36 (b) The court in which the acquittal was entered, ~~[[not earlier than 30~~
37 ~~days from]]~~ *at any time after* the date of the acquittal,
38 for the sealing of all records relating to the arrest and the proceedings
39 leading to the *dismissal or* acquittal.
40 2. A petition filed pursuant to this section must ~~[[be]]~~ :
41 (a) *Be* accompanied by a current, verified record of the criminal history
42 of the petitioner received from the local law enforcement agency of the city
43 or county in which the petitioner appeared in court ~~[[]]~~ ;
44 (b) *Include a list of any other public or private agency, company,*
45 *official or other custodian of records that is reasonably known to the*
46 *petitioner to have possession of records of the arrest and of the*
47 *proceedings leading to the dismissal or acquittal and to whom the order*
48 *to seal records, if issued, will be directed; and*



* A B 3 2 8 R 1 *

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

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

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

9 (b) If the charges were dismissed or the acquittal was entered in a
10 municipal court, the prosecuting attorney for the city.
11 The prosecuting attorney and any person having relevant evidence may
12 testify and present evidence at the hearing on the petition.

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

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

21 179.285 Except as otherwise provided in NRS 179.301, if the court
22 orders a record sealed pursuant to NRS 179.245, 179.255 or 453.3365 ~~to~~
23 ~~and~~ :

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

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

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

33 179.295 1. The person who is the subject of the records that are
34 sealed pursuant to NRS 179.245, 179.255 or 453.3365 may petition the
35 court that ordered the records sealed to permit inspection of the records by
36 a person named in the petition, and the court may order such inspection.
37 Except as otherwise provided in this section and NRS 179.301, the court
38 may not order the inspection of the records under any other circumstances.

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

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



1 4. This section does not prohibit a court from considering a
2 conviction for which records have been sealed pursuant to NRS 179.245,
3 179.255 or 453.3365 in determining whether to grant a petition pursuant
4 to NRS 179.245, 179.255 or 453.3365 for a conviction of another offense.

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

6 179A.160 ~~{At any time after a date 5 years after the arrest of a person,~~
7 ~~or after 5 years after the date of issuance of a citation or warrant, for an~~
8 ~~offense for which the person was acquitted or which ended in a disposition~~
9 ~~favorable to the person.}~~

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

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

22 ~~1.~~ (a) The defendant is a fugitive ~~1.~~

23 ~~2.~~ ;

24 (b) The case is under active prosecution according to a current
25 certificate of a prosecuting attorney ~~1.~~

26 ~~3.~~ ;

27 (c) The disposition of the case was a deferred prosecution, plea bargain
28 or other similar disposition ~~1.~~

29 ~~4.~~ ;

30 (d) The person who is the subject of the record has a prior conviction
31 for a felony or gross misdemeanor in any jurisdiction in the United States ~~1.~~

32 ~~5.~~ ; or

33 (e) The person who is the subject of the record has been arrested for or
34 charged with another crime, other than a minor traffic violation, ~~during the~~
35 ~~5 years~~ since the arrest, citation or warrant which he seeks to have
36 removed from the record.

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

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

41 209.511 1. When an offender is released from prison by expiration of
42 his term of sentence, by pardon or by parole, the director:

43 (a) May furnish him with a sum of money not to exceed \$100, the
44 amount to be based upon the offender's economic need as determined by
45 the director ; ~~1.~~

46 (b) Shall give him notice of the provisions of chapter 179C of NRS and
47 NRS 202.360 ; ~~1.~~

48 (c) Shall require him to sign an acknowledgment of the notice required
49 in paragraph (b) ; ~~1.~~



* A B 3 2 8 R 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 ~~†~~

~~(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 ~~†~~

~~(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 be so stated in the instrument or certificate of pardon; and when granted upon conditions, limitations or restrictions, they shall 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, the board determines that the applicant ~~†meets the requirements of this subsection.†~~ *has received a pardon*, it shall 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.

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 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 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~~



* A B 3 2 8 R 1 *

1 ~~repository for Nevada records of criminal history.~~ If, after investigation,
2 the board determines that the applicant ~~meets the requirements of this~~
3 ~~subsection.~~ *has received an honorable discharge from parole,* it shall
4 restore him to his civil rights and release him from all penalties and
5 disabilities resulting from the offense or crime of which he was convicted.
6 If the board refuses to grant such restoration and release, the applicant may,
7 after notice to the board, petition the district court in which the conviction
8 was obtained for an order directing the board to grant such restoration and
9 release.

10 3. The board may adopt regulations necessary or convenient for the
11 purposes of this section.

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

13 213.157 In any case where a person convicted of a felony in the State
14 of Nevada has served his sentence and been released from prison, ~~and has~~
15 ~~not been convicted of any offense greater than a traffic violation within 5~~
16 ~~years of his release.~~ he may apply to the division requesting restoration of
17 his civil rights and release from all penalties and disabilities which resulted
18 from the offense or crime of which he was convicted. ~~The application~~
19 ~~must be accompanied by a current, certified record of the applicant's~~
20 ~~criminal history received from the central repository for Nevada records of~~
21 ~~criminal history.~~ If, after investigation, the division determines that the
22 applicant ~~meets the requirements of this section.~~ *has served his sentence*
23 *and been released from prison,* it shall petition the district court in which
24 the conviction was obtained for an order granting such restoration and
25 release. If the division refuses to submit such petition, the applicant may,
26 after giving notice to the division, petition such court directly for the
27 restoration of his civil rights and release from all penalties and disabilities
28 which resulted from the offense or crime of which he was convicted.

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

30 1. A petition for an order to seal records pursuant to NRS 179.245 or
31 179.255 that is filed on or after the effective date of this act.

32 2. An application for restoration of civil rights pursuant to NRS
33 176A.860, 213.090, 213.155 or 213.157 that is filed on or after the
34 effective date of this act.

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

