

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.

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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 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,



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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,~~
7 *division*, in person or by attorney, pursuant to NRS 176A.860, for the
8 restoration of his civil rights ~~and, to the court, pursuant to NRS~~
9 ~~179.245, for the sealing of records relating to his conviction.~~ He must be
10 informed of ~~this privilege~~ *these 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}~~

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

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

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

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



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1 notice to the division, directly petition the court for *an order granting the*
2 restoration of his civil rights.

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

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

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

10 179.245 1. Except as otherwise provided in subsection 5 and NRS
11 453.3365, a person ~~[who has been convicted of:]~~ *may petition the court in*
12 *which he was convicted for the sealing of all records relating to a*
13 *conviction of:*

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

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

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

24 (d) Any gross misdemeanor ~~[may, after 10]~~ *after 7* years from the date
25 of his ~~[conviction or]~~ release from *actual* custody ~~[;]~~
26 ~~—(e)] or discharge from probation, whichever occurs later;~~

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

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

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

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

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

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

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

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



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 person was convicted in a district court or justice's*
7 *court, the* prosecuting attorney for the county; or

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

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

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

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

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

31 7. As used in this section:

32 (a) "Crime against a child" has the meaning ascribed to it in NRS
33 179D.210.

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

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

36 179.255 1. If a person has been arrested for alleged criminal conduct
37 and the charges are dismissed or such person is acquitted of the charges,
38 the person may petition:

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

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

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

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



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

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

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

11 (a) ~~The~~ If the charges were dismissed or the acquittal was entered in
12 a district court or justice's court, the prosecuting attorney for the
13 county; or

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

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

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

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

26 179.285 Except as otherwise provided in NRS 179.301, if the court
27 orders a record sealed pursuant to NRS 179.245, 179.255 or 453.3365 ~~the~~
28 ~~and~~ :

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

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

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

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

44 2. If a person has been arrested, the charges have been dismissed and
45 the records of the arrest have been sealed, the court may order the
46 inspection of the records by a prosecuting attorney upon a showing that as
47 a result of newly discovered evidence, the person has been arrested for the
48 same or similar offense and that there is sufficient evidence reasonably to
49 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-~~ (a) The defendant is a fugitive ~~;~~

~~2-~~ ;

(b) The case is under active prosecution according to a current certificate of a prosecuting attorney ~~;~~

~~3-~~ ;

(c) The disposition of the case was a deferred prosecution, plea bargain or other similar disposition ~~;~~

~~4-~~ ;

(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 ~~;~~

~~5-~~ ; 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 ; ~~;~~



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1 (b) Shall give him notice of the provisions of chapter 179C of NRS and
2 NRS 202.360 ; ~~†~~
3 (c) Shall require him to sign an acknowledgment of the notice required
4 in paragraph (b) ; ~~†~~
5 (d) *Shall give him notice of the provisions of NRS 179.245 and the*
6 *provisions of NRS 213.090, 213.155 or 213.157, as applicable;*
7 (e) May provide him with clothing suitable for reentering society ~~†~~
8 ~~(e)~~ ;
9 (f) May provide him with the cost of transportation to his place of
10 residence anywhere within the continental United States, or to the place of
11 his conviction ~~†~~
12 ~~(f)~~ ; and
13 (g) Shall require him to submit to at least one test for exposure to the
14 human immunodeficiency virus.
15 2. The costs authorized in paragraphs (a), ~~(d), (e) and~~ (e), (f) and (g)
16 of subsection 1 must be paid out of the appropriate account within the state
17 general fund for the use of the department as other claims against the state
18 are paid to the extent that the costs have not been paid in accordance with
19 subsection 5 of NRS 209.221 and NRS 209.246.
20 **Sec. 11.** NRS 213.090 is hereby amended to read as follows:
21 213.090 1. When a pardon is granted for any offense committed, the
22 pardon may or may not include restoration of civil rights. If the pardon
23 includes restoration of civil rights, it ~~shall~~ *must* be so stated in the
24 instrument or certificate of ~~pardon~~ *pardon* and , when granted upon
25 conditions, limitations or restrictions, they ~~shall~~ *must* be fully set forth in
26 the instrument.
27 2. In any case where a convicted person has received a pardon without
28 immediate restoration of his civil rights , ~~and has not been convicted of~~
29 ~~any offense greater than a traffic violation within 5 years after such~~
30 ~~pardon~~ , he may apply to the state board of pardons commissioners for
31 restoration of his civil rights and release from penalties and disabilities
32 resulting from the offense or crime of which he was convicted. ~~If, after~~
33 ~~investigation,~~
34 3. *Upon receiving an application pursuant to subsection 2,* the board
35 ~~determines that~~ *shall determine whether* the applicant ~~meets the~~
36 ~~requirements of this subsection, it~~ *has received a pardon. If the board*
37 *determines that the applicant has received a pardon, the board shall , as*
38 *soon as reasonably practicable,* restore him to his civil rights and release
39 him from all penalties and disabilities resulting from the offense or crime
40 of which he was convicted. ~~If the board refuses to grant such restoration~~
41 ~~and release, the applicant may, after notice to the board, petition the district~~
42 ~~court in which the conviction was obtained for an order directing the board~~
43 ~~to grant such restoration and release.~~
44 4. *An applicant must not be required to pay a fee to have his civil*
45 *rights restored or to be released from penalties and disabilities pursuant*
46 *to this section.*
47 **Sec. 12.** NRS 213.155 is hereby amended to read as follows:
48 213.155 1. The board may restore a paroled prisoner to his civil
49 rights, conditioned upon the prisoner receiving an honorable discharge



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1 from parole pursuant to NRS 213.154. Such restoration must take effect at
2 the expiration of the parole of the prisoner.

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

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

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

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

30 ~~{3-}~~ 6. The board may adopt regulations necessary or convenient for
31 the purposes of this section.

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

33 213.157 1. In any case where a person convicted of a felony in the
34 State of Nevada has served his sentence and been released from prison,
35 ~~{and has not been convicted of any offense greater than a traffic violation~~
36 ~~within 5 years of his release,}~~ he may apply to the division requesting
37 restoration of his civil rights and release from all penalties and disabilities
38 which resulted from the offense or crime of which he was convicted. ~~{The~~
39 ~~application must be accompanied by a current, certified record of the~~
40 ~~applicant's criminal history received from the central repository for~~
41 ~~Nevada records of criminal history. If, after investigation, the division~~
42 ~~determines that the applicant meets the requirements of this section, it shall~~
43 ~~petition}~~

44 2. *Upon receiving an application pursuant to subsection 1, the*
45 *division shall determine whether the applicant has served his sentence*
46 *and been released from prison. If the division determines that the*
47 *applicant has served his sentence and been released from prison, the*
48 *division shall forward the application to the district court in which the*
49 *conviction was obtained . {for an order granting such restoration and*



1 ~~release. If the division refuses to submit such petition, the applicant may,~~
2 ~~after giving notice to the division, petition such court directly for the~~
3 ~~restoration of his]~~

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

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

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

12 1. A petition for an order to seal records pursuant to NRS 179.245 or
13 179.255 that is filed on or after the effective date of this act.

14 2. An application for restoration of civil rights pursuant to NRS
15 176A.860, 213.090, 213.155 or 213.157 that is filed on or after the
16 effective date of this act.

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

