

ASSEMBLY BILL NO. 136—COMMITTEE ON JUDICIARY

(ON BEHALF OF THE ADVISORY COMMISSION
ON THE ADMINISTRATION OF JUSTICE)

FEBRUARY 11, 2011

Referred to Committee on Judiciary

SUMMARY—Revises provisions governing criminal laws.
(BDR 16-634)

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 laws; revising provisions governing credits for offenders sentenced for certain crimes; revising provisions governing the sealing and removal of certain records; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

Existing law provides that certain credits to the sentence of an offender convicted of certain category C, D or E felonies must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances. (NRS 209.4465) **Section 1** of this bill adds to the exceptions that an offender who has been convicted of being a habitual criminal or a habitual felon may not have credits applied to both the minimum and maximum term imposed by the sentence. **Section 1** further provides that an offender convicted of a category B felony also qualifies to have certain credits deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and from the maximum term imposed by the sentence, except in certain circumstances.

Existing law authorizes a person arrested for alleged criminal conduct to petition for the sealing of all records relating to the arrest if the charges were dismissed or the person was acquitted of the charges. (NRS 179.255) **Section 1.3** of this bill authorizes such a person to petition for the sealing of all records relating to an arrest if the prosecuting attorney declines to prosecute the charges.

Existing law also provides that a person arrested, or issued a citation or a warrant, for alleged criminal conduct may apply to the Central Repository for Nevada Records of Criminal History to remove the record of criminal history if the charge was dismissed, acquittal was entered or the disposition of the charge was



favorable to the accused. (NRS 179A.160) **Section 1.7** of this bill authorizes such a person to apply to have the record of criminal history removed if the prosecuting attorney declined to prosecute the charges.

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

Section 1. NRS 209.4465 is hereby amended to read as follows:

209.4465 1. An offender who is sentenced to prison for a crime committed on or after July 17, 1997, who has no serious infraction of the regulations of the Department, the terms and conditions of his or her residential confinement or the laws of the State recorded against the offender, and who performs in a faithful, orderly and peaceable manner the duties assigned to the offender, must be allowed:

(a) For the period the offender is actually incarcerated pursuant to his or her sentence;

(b) For the period the offender is in residential confinement; and

(c) For the period the offender is in the custody of the Division of Parole and Probation of the Department of Public Safety pursuant to NRS 209.4886 or 209.4888,

➔ a deduction of 20 days from his or her sentence for each month the offender serves.

2. In addition to the credits allowed pursuant to subsection 1, the Director may allow not more than 10 days of credit each month for an offender whose diligence in labor and study merits such credits. In addition to the credits allowed pursuant to this subsection, an offender is entitled to the following credits for educational achievement:

(a) For earning a general educational development certificate, 60 days.

(b) For earning a high school diploma, 90 days.

(c) For earning his or her first associate degree, 120 days.

3. The Director may, in his or her discretion, authorize an offender to receive a maximum of 90 days of credit for each additional degree of higher education earned by the offender.

4. The Director may allow not more than 10 days of credit each month for an offender who participates in a diligent and responsible manner in a center for the purpose of making restitution, program for reentry of offenders and parolees into the community, conservation camp, program of work release or another program conducted outside of the prison. An offender who earns credit pursuant to this subsection is eligible to earn the entire 30 days of credit each month that is allowed pursuant to subsections 1 and 2.



* A B 1 3 6 R 3 *

5. The Director may allow not more than 90 days of credit each year for an offender who engages in exceptional meritorious service.

6. The Board shall adopt regulations governing the award, forfeiture and restoration of credits pursuant to this section.

7. Except as otherwise provided in subsection 8, credits earned pursuant to this section:

(a) Must be deducted from the maximum term imposed by the sentence; and

(b) Apply to eligibility for parole unless the offender was sentenced pursuant to a statute which specifies a minimum sentence that must be served before a person becomes eligible for parole.

8. Credits earned pursuant to this section by an offender who has not been convicted of:

(a) Any crime that is punishable as a felony involving the use or threatened use of force or violence against the victim;

(b) A sexual offense that is punishable as a felony;

(c) A violation of NRS 484C.110, 484C.120, 484C.130 or 484C.430 that is punishable as a felony; ~~for~~

(d) *Being a habitual criminal pursuant to NRS 207.010, a habitual felon pursuant to NRS 207.012 or a habitually fraudulent felon pursuant to NRS 207.014; or*

(e) ~~IA~~ *Except as otherwise provided in subsection 9, a category A or B felony,*

➤ *apply to eligibility for parole and must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and must be deducted from the maximum term imposed by the sentence.*

9. *Credits earned by an offender who has been convicted of a category B felony apply to eligibility for parole, must be deducted from the minimum term imposed by the sentence until the offender becomes eligible for parole and must be deducted from the maximum term imposed by the sentence if the offender:*

(a) *Has not been convicted of an offense listed in paragraphs (a) to (d), inclusive, of subsection 8;*

(b) *Has not served three or more separate terms of imprisonment for three separate felony convictions in this State;*

(c) *Has not served five or more separate terms of imprisonment for five separate felony convictions, regardless of the jurisdiction in which the offender was convicted;*

(d) *Is not serving a sentence for which an additional penalty was imposed for the use of a firearm pursuant to NRS 193.165; and*

(e) *Is not serving a sentence for violating the provisions of NRS 202.360.*



Sec. 1.3. 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, *the prosecuting attorney having jurisdiction declined prosecution of the charges* or such person is acquitted of the charges, the person may petition:

(a) The court in which the charges were dismissed, at any time after the date the charges were dismissed; ~~for~~

(b) *The court having jurisdiction in which the charges were declined for prosecution, at any time after 180 days after the date of the declination; or*

(c) The court in which the acquittal was entered, 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, *declination* or acquittal.

2. If the conviction of a person is set aside pursuant to NRS 458A.240, the person may petition the court that set aside the conviction, at any time after the conviction has been set aside, for the sealing of all records relating to the setting aside of the conviction.

3. A petition filed pursuant to subsection 1 or 2 must:

(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 and 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, *declination* 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.

4. Upon receiving a petition pursuant to subsection 1, the court shall notify the law enforcement agency that arrested the petitioner for the crime and:

(a) If the charges were dismissed, *declined for prosecution* or the acquittal was entered in a district court or justice court, the prosecuting attorney for the county; or

(b) If the charges were dismissed, *declined for prosecution* 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.



5. Upon receiving a petition pursuant to subsection 2, the court shall notify:

(a) If the conviction was set aside in a district court or justice court, the prosecuting attorney for the county; or

(b) If the conviction was set aside 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.

6. If, after the hearing on a petition submitted pursuant to subsection 1, the court finds that there has been an acquittal, *that the prosecution was declined* 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, *declination* 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.

7. If, after the hearing on a petition submitted pursuant to subsection 2, the court finds that the conviction of the petitioner was set aside pursuant to NRS 458A.240, the court may order sealed all records relating to the setting aside 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 company, agency or official in the State of Nevada.

8. If the prosecuting attorney having jurisdiction previously declined prosecution of the charges and the records of the arrest have been sealed, the prosecuting attorney may subsequently file the charges at any time before the running of the statute of limitations for those charges. If such charges are filed with the court, the court shall order the inspection of the records without the prosecuting attorney having to petition the court pursuant to NRS 179.295.

Sec. 1.5. 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 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 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, *subsection 8 of NRS 179.255* and NRS 179.259 and 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



1 upon a showing that as a result of newly discovered evidence, the
2 person has been arrested for the same or a similar offense and that
3 there is sufficient evidence reasonably to conclude that the person
4 will stand trial for the offense.

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

10 4. This section does not prohibit a court from considering a
11 conviction for which records have been sealed pursuant to NRS
12 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
13 458.330 in determining whether to grant a petition pursuant to NRS
14 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or
15 458.330 for a conviction of another offense.

16 **Sec. 1.7.** NRS 179A.160 is hereby amended to read as
17 follows:

18 179A.160 1. If a person has been arrested or issued a citation,
19 or has been the subject of a warrant for alleged criminal conduct and
20 the person is acquitted of the charge or the disposition of the charge
21 is favorable to the person, at any time after the charge is dismissed,
22 acquittal is entered or disposition of the charge in favor of the
23 person is final, the person who is the subject of a record of criminal
24 history relating to the arrest, citation or warrant may apply in
25 writing to the Central Repository and the agency which maintains
26 the record to have it removed from the files which are available and
27 generally searched for the purpose of responding to inquiries
28 concerning the criminal history of a person.

29 2. *If a person has been arrested or issued a citation, or has*
30 *been the subject of a warrant for alleged criminal conduct and the*
31 *prosecuting attorney having jurisdiction declined prosecution, at*
32 *any time after 180 days after the declination, the person who is the*
33 *subject of a record of criminal history relating to the arrest,*
34 *citation or warrant may apply in writing to the Central Repository*
35 *and the agency which maintains the record to have it removed*
36 *from the files which are available and generally searched for the*
37 *purpose of responding to inquiries concerning the criminal history*
38 *of a person.*

39 3. The Central Repository and the agency shall remove the
40 record unless:

- 41 (a) The defendant is a fugitive;
42 (b) The case is under active prosecution according to a current
43 certificate of a prosecuting attorney;
44 (c) The disposition of the case was a deferred prosecution, plea
45 bargain or other similar disposition;



(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; 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, since the arrest, citation or warrant which the person seeks to have removed from the record.

~~13.1~~ 4. 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. 2. For the purpose of calculating the credits earned by an offender pursuant to NRS 209.4465, the amendatory provisions of section 1 of this act must be applied:

1. Retroactively to January 1, 2005, to reduce the minimum term of imprisonment of an offender described in subsections 8 and 9 of NRS 209.4465, as amended by section 1 of this act, who was placed in the custody of the Department of Corrections before January 1, 2012, and who remains in such custody on January 1, 2012.

2. Retroactively to January 1, 2011, to reduce the maximum term of imprisonment of an offender who was placed on parole before January 1, 2012.

3. In the manner set forth in NRS 209.4465 for all offenders in the custody of the Department of Corrections commencing on January 1, 2012, and for all offenders who are on parole commencing on January 1, 2012.

Sec. 3. This act becomes effective on January 1, 2012.

