

ASSEMBLY BILL NO. 142—ASSEMBLYMEN MUNFORD, FIORE;
DUNCAN, ELLISON, HANSEN, HARDY, HOGAN, HORNE,
KIRKPATRICK AND MARTIN

FEBRUARY 18, 2013

JOINT SPONSORS: SENATORS SEGERBLOM, DENIS, KIHUEN;
ATKINSON, GUSTAVSON, JONES AND SPEARMAN

Referred to Committee on Judiciary

SUMMARY—Revises provisions relating to the sealing and
removal of certain records. (BDR 14-490)

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 records; revising provisions governing the
sealing and removal of certain records; and providing
other matters properly relating thereto.

Legislative Counsel's Digest:

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** 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 who has been arrested, issued a citation or the subject of 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 3** 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.



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

Section 1. 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 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.



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

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

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

8 (b) If the conviction was set aside in a municipal court, the
9 prosecuting attorney for the city.

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

13 6. If, after the hearing on a petition submitted pursuant to
14 subsection 1, the court finds that there has been an acquittal, *that*
15 *the prosecution was declined* or that the charges were dismissed
16 and there is no evidence that further action will be brought against
17 the person, the court may order sealed all records of the arrest and of
18 the proceedings leading to the acquittal, *declination* or dismissal
19 which are in the custody of the court, of another court in the State of
20 Nevada or of a public or private company, agency or official in the
21 State of Nevada.

22 7. If, after the hearing on a petition submitted pursuant to
23 subsection 2, the court finds that the conviction of the petitioner was
24 set aside pursuant to NRS 458A.240, the court may order sealed all
25 records relating to the setting aside of the conviction which are in
26 the custody of the court, of another court in the State of Nevada or
27 of a public or private company, agency or official in the State of
28 Nevada.

29 ***8. If the prosecuting attorney having jurisdiction previously***
30 ***declined prosecution of the charges and the records of the arrest***
31 ***have been sealed pursuant to subsection 6, the prosecuting***
32 ***attorney may subsequently file the charges at any time before the***
33 ***running of the statute of limitations for those charges. If such***
34 ***charges are filed with the court, the court shall order the***
35 ***inspection of the records without the prosecuting attorney having***
36 ***to petition the court pursuant to NRS 179.295.***

37 **Sec. 2.** NRS 179.295 is hereby amended to read as follows:

38 179.295 1. The person who is the subject of the records that
39 are sealed pursuant to NRS 176A.265, 176A.295, 179.245, 179.255,
40 179.259, 453.3365 or 458.330 may petition the court that ordered
41 the records sealed to permit inspection of the records by a person
42 named in the petition, and the court may order such inspection.
43 Except as otherwise provided in this section, *subsection 8 of NRS*
44 *179.255* and NRS 179.259 and 179.301, the court may not order the
45 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 a similar offense and that there is sufficient evidence reasonably to conclude that the person 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 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 in determining whether to grant a petition pursuant to NRS 176A.265, 176A.295, 179.245, 179.255, 179.259, 453.3365 or 458.330 for a conviction of another offense.

Sec. 3. NRS 179A.160 is hereby amended to read as follows:

179A.160 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. If a person has been arrested or issued a citation, or has been the subject of a warrant for alleged criminal conduct and the prosecuting attorney having jurisdiction declined prosecution, at any time 180 days after the declination, 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.

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

(a) The defendant is a fugitive;

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



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

3 (d) The person who is the subject of the record has a prior
4 conviction for a felony or gross misdemeanor in any jurisdiction in
5 the United States; or

6 (e) The person who is the subject of the record has been arrested
7 for or charged with another crime, other than a minor traffic
8 violation, since the arrest, citation or warrant which the person seeks
9 to have removed from the record.

10 ~~13~~ 4. This section does not restrict the authority of a court to
11 order the deletion or modification of a record in a particular cause or
12 concerning a particular person or event.

